DOCUMENT RESUME

ED 380 866 EA 026 573

AUTHOR	Beckham, Joseph C.
TITLE	School Officials and the Courts: Update 1994. ERS Monograph.
INSTITUTION	Educational Research Service, Arlington, Va.
PUB DATE	Jan 95
NOTE	81p.; For 1993 report, see ED 366 071.
AVAILABLE FROM	Educational Research Service, 2000 Clarendon Blvd., Arlington, VA 22201 (Stock No. 0193; $13, member; $26, nonmember).
PUB TYPE	Legal/Legislative/Regulatory Materials (090) -- Guides - Non-Classroom Use (055)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Compliance (Legal); *Court Litigation; Educational Finance; Elementary Secondary Education; *Legal Problems; *Legal Responsibility; *School Law; Special Education; State Church Separation; Student Rights; Superintendents; Teacher Rights

ABSTRACT

This handbook is the 16th in the series of monographs designed to summarize judicial decisions on elementary and secondary education. The cases included in the book were selected from judicial decisions found in federal and regional reporters for the period July 1, 1993, to June 30, 1994. The cases provide a general overview of school law issues for the practicing administrator, teacher, or school board member. The monograph is designed primarily to provide a broad treatment of case law involving public school issues. Cases were selected on the basis of their relevance to contemporary problems in public school settings, their definitiveness as articulations of existing law, and their reliability as consistent guides to educational policy making and practice. Topics of discussion include the following: school boards and board members, administrators, finance, teachers and other district employees, pupils, special education, religion, and torts and related statutory liability. A glossary and reference notes are included. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

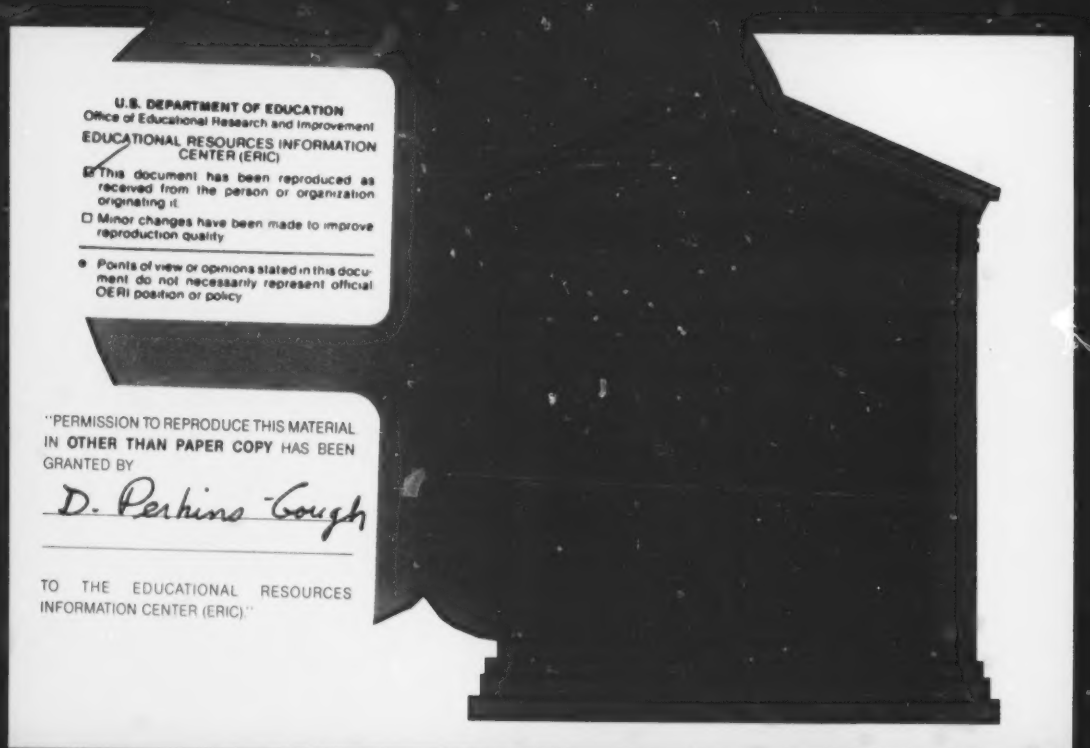
ED 380 866

ERS Monograph

School Officials and the Courts:

Update 1994

Joseph C. Beckham



U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN OTHER THAN PAPER COPY HAS BEEN GRANTED BY

D. Perkins-Gough

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EA026573

Educational Research Service

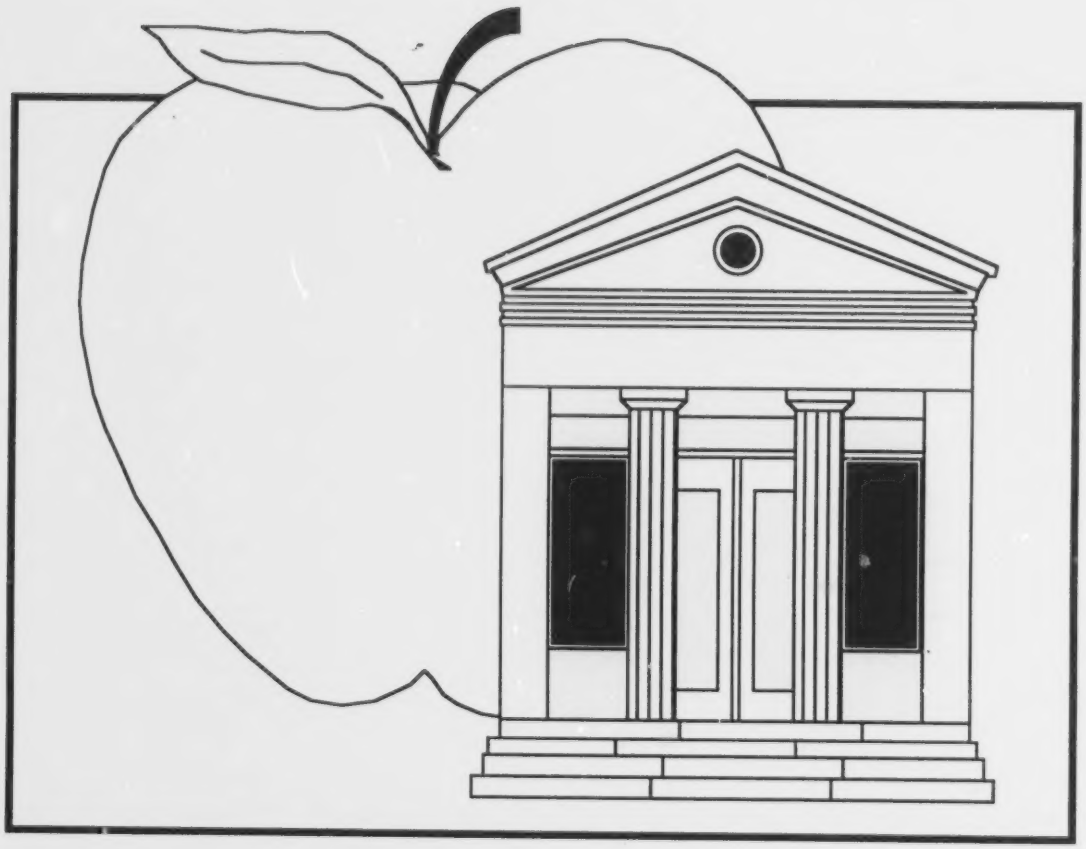
2

ERS Monograph

School Officials and the Courts:

Update 1994

Joseph C. Beckham



Copyright © 1994 Educational Research Service.

Educational Research Service
2000 Clarendon Boulevard
Arlington, Virginia 22201
Phone: (703) 243-2100
Fax: (703) 243-8316

The Information Source for School Decisions

Sponsored by:

- American Association of School Administrators
- American Association of School Personnel Administrators
- Association of School Business Officials
- Council of Chief State School Officers
- National Association of Elementary School Principals
- National Association of Secondary School Principals
- National School Public Relations Association

Educational Research Service is an independent, nonprofit corporation serving the research and information needs of the nation's school systems, their administrative staffs, school boards, and the public.

ERS services are available to local school districts, state and local associations of school administrators and school boards, regional educational service agencies, state departments of education, university departments of educational administration, and other related organizations. Subscription rates are graduated according to school district size or type of agency, and are available on request. For one annual fee, ERS subscribers receive a broad range of resources, including: access to the ERS On-Call Information Service for all administrators and board members in the district; a copy of each new ERS study or report (12 to 15 each year); the monthly *ERS Bulletin*, summarizing research produced by other agencies; the quarterly *ERS Spectrum*, the journal of school research and information; access to the ERS *School Operations Information Bank*, including the thrice-yearly *School Operations Information Exchange;* and ERS School District Comparative Profiles.

For more information about ERS services, write, call, or fax: Educational Research Service, 2000 Clarendon Boulevard, Arlington, Virginia 22201. Phone: (703) 243-2100. Fax: (703) 243-8316.

ERS Executive Staff

Glen E. Robinson
President
Director of Research

John M. Forsyth
Vice President

ERS and the author are solely responsible for this publication; no approval or endorsement by specific sponsoring organizations is implied.

ORDERING INFORMATION: Order from Educational Research Service, 2000 Clarendon Boulevard, Arlington, Virginia 22201. Phone: (703) 243-2100. Fax: (703) 243-8316. ERS subscriber price: $13.00. (Single copy routinely mailed as part of subscription.) Nonsubscriber price: $26.00. All mail orders must be accompanied by check or purchase order. Phone orders accepted with Visa or MasterCard. Please add the larger of $3.50 or 10% of purchase price for postage and handling. Stock #0193.

Contents

Foreword vii

Introduction 1

School Boards and Board Members

Federal Gun-Free School Zones Act Is Subject to Constitutional Challenge 2
Student's Threat Violates State's Safe Schools Act 3
Community Schools Group Is Denied Right to Intervene in Desegregation Consolidation 4
Creation of a Separate School District Could Hamper Desegregation Effort 4
Ability Grouping Found to Violate Equal Protection of the Law 5
District's Ability Grouping and Tracking Contributes to Board's Segregative Intent 6
Affirmative Action in Lay-Off Decisions Violates Equal Protection 6
District's Failure to Implement African-American Curriculum Does Not Violate the Civil Rights Act 7
Condom Distribution Violates Parents' Liberty Interest in Raising and Educating Their Children 7

Administrators

Superintendent's Oral Agreement Fails as a Contract of Employment 9
Supervisor's "At Will" Status Permits Termination at Any Time 9
Principal Challenges Suspension for Allowing Student to Pray over a School Intercom 10
Director's Conduct Not Found to Be a Persistent Violation of School Law 11
Supervisor Found to Be an "Equal Opportunity" Harasser 11
Administrator Fails to Establish Claim of Sex Discrimination 12
African-American Administrator Establishes Claim of Race Discrimination in Employment 13

Finance

New Hampshire's Constitution Obligates State to Provide Constitutionally Adequate Education 14
Virginia Constitution Held Not to Mandate "Substantial Equality" 15
Federal Court Could Order State to Help Pay for Magnet Schools and Salary Increases Under Desegregation Plan 15

State Cannot Designate a Portion of General Revenue Taxes to Pay Off School Buildings 16
General Education Forfeiture Provisions in State Funding Law Are Subject to Court Review 16
Due Process Not Denied by Board's Decision to Reject Low Bidder 17

Teachers and Other District Employees

Teacher's Reprimand and Transfer Do Not Implicate First Amendment Rights 18
Teacher's Conflict with Co-Worker Outweighs Any Claim of Free Speech 18
Teacher's Criticism of District Hiring Practices Is a Matter of Public Concern and Constitutionally Protected 19
District Administrative Hearing Fails to Meet Requirement for Due Process 20
Teacher's Offensive Comments Justify Dismissal for Insubordination 21
Classroom Videotape Characterized as a Single Episode, Insufficient to Justify Termination 21
Willful Neglect of Duty Requires No Opportunity for Remediation 22
Teacher's Due Process Ensured Through Extensive Pre-Termination Investigations and Hearings on Use of Corporal Punishment 23
Use of Sick Leave for Ski Trip Results in Teachers' Dismissal 23
Failure to Comply with State-Mandated Evaluation Leads to Teacher Reinstatement 24
Board Is Powerless to Rescind Contract Renewal in Reduction-in-Force 24
Thorough and Extensive Observation and Evaluation System Justifies Dismissal for Incompetence 25
Failure to Hire Female as Full-Time Custodian Raises Triable Issue in Sex Discrimination Suit 26
District Authorized to Require Drug Testing of School Bus Driver 27
Aide's Failure to Inform District of Her Religious Belief Bars Her Claim of Religious Discrimination 27
District Successfully Challenges Teacher's Credibility in Sexual Harassment Claim 28

Pupils

Junior High's Policy on Distribution of Written Materials Creates Limited Open Forum 30
Principal's Censorship of Film Reviews Violates Student's Freedom of Speech 31
Court Raises Doubt About the Applicability of Free Speech to Students at the Elementary Level 31
State Court Refuses to Address Constitutionality of High School Dress Codes 32
Restrictions on Clothing Bearing Sports Insignias Struck Down in Federal Court 32
Student's Comments Fail to Meet Test as Actionable Threats and Are Protected Free Speech 32
Federal Appeals Court Strikes Down District's Random Urinalysis Testing Program for Athletes 33

District's Policy on Unreasonable Searches Shields It from Liability 34
Totality of Circumstances Justifies Search of Students for Drugs 34
Reasonable Suspicion Standard Applies to Searches by School Security Officers 35
Confining Child to Bathroom May Implicate Substantive Due Process Rights 35
Suspended Student Does Not Have a Right to Supervision and Protection 36
Being "Under the Influence" May Include Ingestion of a Single Can of Beer..... 37
Principal's Deliberate Indifference to Teacher's Molestation of Student Creates Liability 37
Special Relationship Is Created by Level of Custody in a Residential Facility 38
Lack of Actual Knowledge of Employee's Acts Shields District from Liability for Sexual Assaults 39
Grade Eligibility Requirement Flunks the Rational Basis Test 39
Peer Sexual Harassment Does Not Implicate a Title IX Claim of Intentional Discrimination 40
Teacher's Continued Employment in District May Constitute Sexual Harassment 40

Special Education

Absent Provision in IEP, There Is No Right to Participation in Interscholastic Sports 42
Preference for Mainstream Placement Is Influenced by Four Factors 42
Mainstreaming Must Be Considered in Determining Appropriate Placement..... 43
Preference for Mainstreaming Defeats Parents' Demand for Full-Time Residential Program 43
Independent Evaluations Must Be "Considered" by Placement Team..... 44
Parent Is Entitled to Reimbursement for Unilateral Placement 44
Reimbursement for Unilateral Placement Denied in Favor of Mainstreaming 45
Federal Courts May Order Reimbursement to Parents for Unilateral Placements in Unapproved Private Schools..... 46
Reimbursement for Unilateral Placement Can Be Denied When School District's IEP Meets Test for Appropriate Education..... 46
Courts May Impose Compensatory Education Requirements for Past Deprivations of Special Education Services 47
Serious and Irreparable Harm to Child Constitutes an Exception to Requirement to Exhaust Administrative Processes 48
Failure to Properly Place a Special Education Student Does Not Establish "Educational Malpractice"..... 48
Gifted Students Have No Constitutional Right to Special Education Services 49

Religion

Religious Neutrality Is Violated When State Creates a Special School District for Members of a Religious Community..... 50
Voluntary, Student-Initiated Prayers at Graduation Ceremonies Are Permissible 51

Board Policy Encouraging Student-Led Prayers at Graduation Ceremonies Places Students in Coercive Setting 51
Whole Language Curriculum Does Not Promote Witchcraft in Violation of the Establishment Clause 52
Depictions and Costumes at Halloween Celebrations Enrich Cultural Awareness 53
Recognition of Religious Holidays in Public Schools Does Not Violate Establishment Clause 53
Students and Parents May Utilize School Facilities on the Same Basis as Other Community Groups 54
School Policy Allowing Boy Scouts to Use Facilities and Distribute Materials Is Permissible 55
Higher Facilities Rental for Church-Affiliated Groups Violates Establishment Clause 55
Failure to Recognize Student Bible Club Violates Equal Access Act 56
High School Gospel Choir Must Comply with School-Imposed Provisions of the Equal Access Act 56

Torts and Related Statutory Liability

Exercise of Reasonable Care in Woodworking Class Overcomes Special Education Student's Claim 58
Principal Is Immune for Discretionary Acts When Developing Classroom Safety Rules 58
Football Coaches Are Not Liable for Player Injuries in the Normal Course of Scrimmages 59
District's Playground Liability for Unknown Conditions Is Limited 59
District Owes Duty to Develop Policy for Supervision of Young Children at End of School Day 60
Supervisory Employees Have Qualified Immunity for Hiring and Supervising Aides 60
Teacher Is Protected by Qualified Immunity in Administering Corporal Punishment 61
District Owes No Duty to Protect or Warn Teachers of Violent Behavior 61
State Officials Have Qualified Immunity in Reporting and Investigating Allegations of Child Abuse 62
Defamation Is Only Actionable if Published to a Third Party 62
Principalship Is a Public Office for Purposes of Defamation Suit 62
Principal Is a Public Figure Under State Defamation Standards 63

Reference Notes 65

Glossary of Selected Legal Terms 69

Foreword

School Officials and the Courts: Update 1994 is the 16th in the series of ERS monographs designed to summarize judicial decisions on elementary and secondary education issues. The monographs in this series have been published biennially from 1975 through 1981, and annually since 1981, to help school administrators and others keep aware of court activities in the field of public education.

Today, case law concerning the schools covers a variety of areas — such as the constitutional rights of students and teachers, educational "adequacy," and tort liabilities — that were not at issue to previous generations of school leaders. For this reason, school officials need to keep up to date on current court decisions and their implications for local school district management and policy.

The Educational Research Service asked Dr. Joseph C. Beckham to prepare the summaries and discussions in this monograph. In his discussion of court cases, Dr. Beckham presents technical legal information in a readable, comprehensible style; his comments are intended for the general background and information of laymen, and not as legal advice. His summaries and analyses should be useful to school administrators, board members, students of education law, and others concerned with recent court decisions in the field of elementary and secondary education.

Dr. Beckham is eminently qualified to write *School Officials and the Courts: Update 1994.* He is a Professor in the Department of Educational Leadership at Florida State University's College of Education, and holds a J.D. in law and a Ph.D. in educational administration. For more than 15 years, he has served as a consultant and legal counselor on matters of law and education to school districts, institutions of higher education, state departments of education, and several national organizations. He is on the authors' committee for *West's Education Law Reporter,* and is past-President of the National Organization on Legal Problems of Education. His many publications include articles and law reviews in the *Journal of Education Finance* and the *Journal of Law and Education,* and the monograph *Legal Aspects of Teacher Evaluation.*

ERS expresses appreciation to Dr. Beckham for his carefully prepared summaries of judicial decisions and his insightful comments on the meaning of the various cases in this publication.

Glen E. Robinson
Director of Research
Educational Research Service

Introduction

The cases included in *School Officials and the Courts: Update 1994* were selected from judicial decisions found in federal and regional reporters in the period from July 1, 1993 to June 30, 1994. These cases provide a general overview of school law issues for the practicing administrator, teacher, or school board member. In general, chapter titles conform to previous editions of this annual monograph, with the inclusion of a section on special education, which was added in 1993.

No annual compilation and summary of selected school law cases can be the definitive authority on legal issues that confront today's educator. Judicial opinions vary among jurisdictions and are subject to revision in the course of time or changed circumstances. State and federal court decisions are often limited in terms of generalizability, depending on the application of a particular state's legal standards or the scope of a court's jurisdiction.

Previous editions of *School Officials and the Courts* may be consulted to provide greater depth and scope of coverage as well as insight into long-term trends in case law. Future editions will provide a subsequent history of the cases reported and summarized in this work, indicating instances in which a case has been reversed or otherwise modified on appeal.

This monograph is designed primarily to provide a broad-scope treatment of case law involving public school issues. Cases were selected on the basis of their relevance to contemporary problems in public school settings, their definitiveness as articulations of existing law, and their reliability as consistent guides to educational policy making and practice. The summaries emphasize brevity and concise treatment of legal issues in an effort to inform without presenting undue complexity or procedural irrelevancies. The author's narrative and background commentary are limited to brief introductory materials in favor of an emphasis on the case summaries.

The reader is encouraged to extrapolate legal principles that can guide conduct, but cautioned to recognize that unique variables such as altered circumstances or jurisdictional differences may modify the application of case law. In reviewing the summaries, it is particularly important to consider the legal rationales that guide the judge's resolution of an issue. In the context of public education, school officials must understand these rationales in order to apply the cases in making decisions or formulating policies based on fundamental fairness and reasonable principles of law.

School Boards and Board Members

As state agencies, school boards have the authority to exercise considerable discretion on behalf of public schools. However, the discretionary authority of the board is tempered by the implied standards that boards must act reasonably and that board policy must be rationally related to a valid state purpose. Discretionary authority must be exercised in good faith for a proper motive.

School boards derive authority from state constitutional provisions and legislative enactments. In most instances, courts grant considerable discretion to the local board in carrying out its mission to provide for public education, often granting powers that are implied rather than specifically granted in state laws. However, other constitutional and statutory provisions may expressly constrain the power of school boards. In the past year, courts have examined the authority of school boards in instances involving policy decisions ranging from curriculum implementation to affirmative action, and have evaluated federal and state provisions designed to ensure safe schools.

Federal Gun-Free School Zones Act Is Subject to Constitutional Challenge

The United States Supreme Court will hear arguments in the present term in the case of *United States v. Lopez*, a case that considers the constitutionality of the Gun-Free School Zones Act of 1990. A school zone is defined in the act as any area within 1,000 feet of the boundary of a school's grounds. The law makes it illegal for any individual to possess a firearm at a place the individual knows, or has reasonable cause to believe, is in the school zone. At least three federal courts have addressed this issue, with divergent opinions on the constitutionality of the law.

In one case, the Fifth Circuit Court of Appeals held that the law violates the U.S. Constitution because Congress exceeded its authority under the commerce clause in promulgating the law. In this case, a 12th-grade student in Texas was arrested when he arrived at school carrying a concealed .38 caliber handgun. The student was confronted after school officials received an anonymous tip, and he admitted to carrying the weapon. Although the gun was not loaded, the student had five bullets in his possession. The student said that he was given 40 dollars to deliver the gun to another student after school. The student was charged with a one-count indictment — violating the Gun-Free School Zones Act. After pleading not guilty, the student, through his counsel, moved to dismiss the indictment on the ground that the law was unconstitutional as beyond the power of Congress.

The Fifth Circuit noted that Congress has the power to legislate licensing requirements for handguns, a power tied to the commerce clause authority to regulate interstate commerce. However, the breadth of the commerce clause is not unlimited, and there must be a showing that the regulated activity "substantially affects" commerce. In this case, the court was faced with the competing constitutional concerns related to the authority of states to regulate schools, and general control of simple firearms possession.

The court reasoned that there was nothing in the act itself or in its legislative history that suggested Congress was exercising its powers under the commerce clause, and no suggestion that the "business" of schools affected interstate commerce. In considering the law itself, the court found the congressional action unconstitutional as beyond the power of the federal government.[1]

However, the Ninth Circuit Court of Appeals reached a different conclusion in its analysis of the law. In that case, the student/defendant was spotted in gang uniform by a police officer who approached the student in the parking lot of a California high school. When the student gave consent to a search of the trunk of his vehicle, the officer discovered two rifles in the trunk. The student was charged under the Gun-Free School Zone Act, but sought to have the charges dismissed on the ground that the law was unconstitutional.

The Ninth Circuit Court held that the law represented a permissible exercise of the commerce clause, and concluded that Congress was not required to state explicitly that it was acting pursuant to the commerce clause when it enacted the legislation. The court noted that the violence created through the possession of firearms adversely affects the national economy, and, consequently, it is reasonable for Congress to regulate the possession of firearms pursuant to the commerce clause. The Ninth Circuit Court noted that its decision would create an inter-circuit conflict with the Fifth Circuit's decision, but felt compelled to uphold its interpretation, which tended to support the authority of Congress to legislate in the area of gun control.[2]

Student's Threat Violates State's Safe Schools Act

In a case in South Carolina, a student challenged a determination that he had violated the state's Safe Schools Act when he told a classmate that he intended to kill a teacher.

The 15 year old was in the eighth grade at the time of the incident. While walking with another student in the hallway of the school, he told the student that "if these teachers keep on messing with me, I'm just going to kill them." He further said he would start with a particular teacher because she lived in his neighborhood. One of the student's teachers overheard the remark; the student knew that she was close by, and spoke loud enough for her to hear him.

The provision of the state's Safe Schools Act made it unlawful "to convey to a teacher ... any verbal ... communication which contains any threat to take the life of or to inflict bodily harm upon the ... teacher." The state appeals court agreed with the juvenile court that although the comment was not made directly to the threatened teacher, it was made in the presence of another teacher and thus was effectively "conveyed" under the statute. Although the student asserted that the comment was made in jest and that he told the teacher it was a joke at the time she overheard him, the court was unresponsive to the defense that the conduct was childish horseplay, and affirmed the lower court ruling that the student had violated the law.[3]

Community Schools Group Is Denied Right to Intervene in Desegregation Consolidation

Local community citizens in a Georgia school district sought to intervene in an ongoing desegregation case in order to prevent the creation of a single, consolidated high school for the district.

The consolidated high school had been proposed as a remedy for segregated schools in 1986, and the state had set aside funds to construct the facility. However, when the composition of the local board changed following regular elections, the new board voted to drop the consolidation. The state informed the board that it would distribute the money earmarked for the consolidation to other school districts if construction of the consolidated facility did not begin by 1989.

When plaintiffs in the school desegregation case asked the court to intervene, the district court ruled that it would not favor one consolidated high school over an alternative plan provided that whatever plan was developed would ensure that the school district would not maintain or return to a segregated system. The court ordered the closure of one high school out of three in the district, and the equalization of the curriculum and staffing patterns at the two remaining high schools.

After another election in 1992, the new board voted to pursue the previously proposed consolidation plan and to obtain a court order requiring the state to release the funds set aside to build the new consolidated high school. At this point, local citizens calling themselves "Citizens for Community Schools" sought to intervene in the suit and to enjoin the distribution of the state funds.

The Eleventh Circuit Court of Appeals affirmed a decision of the district court and denied the motion to intervene in the desegregation suit. When a party seeks to intervene, it must establish that there is a legally protectable interest in the litigation which is not adequately represented by existing parties to the lawsuit. In this case, the court found that the interest in maintaining local community schools, without a showing that the consolidation of high schools would hamper the primary goal of eliminating the vestiges of past discrimination, would not be a legally cognizable interest supporting intervention. Furthermore, the court agreed with the district court that the current parties to the litigation adequately represented the proposed intervener's interest in community schools and the request for an injunction.[4]

Creation of a Separate School District Could Hamper Desegregation Effort

An incorporated city within the boundaries of an Alabama county school district sought to establish and operate its own school system. The city intervened in an ongoing desegregation suit involving the county in order to obtain court approval for its plan to establish and operate the separate system.

In responding to the question of whether the separate school system should be permitted, the federal district court noted that no determination had yet been made that the county had succeeded in eliminating all vestiges of the former dual system that existed prior to desegregation orders in the 1970s. State law permits incorporated cities to operate their own school systems, but the court was focused on two issues: 1) the impact of the new school district on the desegregation process in the existing county school district, and 2) the impact of the new school district

on the financing of public education in the successor county school district.

In its holding, the federal district court ruled that the creation of a separate city school district, even if it would promote and maintain a desegregated school district within its boundaries, would impede the dismantling of a segregated system within the county. The court noted that, if the city became a school district and withdrew from the county, the population of the district that remained would be small, rural, and about 77 percent black. Although the city district proposed to alleviate this problem by including attendance zones for students living outside the city district, the court found that this would be an artificial situation dependent on continuing court supervision under a desegregation order. The new school district would also eliminate consideration of a single, consolidated high school for the county, which was part of a desegregation order designed to complete desegregation of public schools at the high school level within the county. The court felt that consolidation, rather than separation, would have the affect of creating economies of scale and would avoid the harsh impact of separating the school districts.[5]

Ability Grouping Found to Violate Equal Protection of the Law

An Arkansas school district was charged by an African-American parent with using its system of ability grouping to discriminate on the basis of race.

The parent had been a student in the schools at the time a desegregation order was implemented in the 1970s, and had been placed in a low-ability class and later in a special education class. Two of her three children were placed in special education classes for at least part of the school day. Her third child was in a low-ability group until she was promoted to the high school, which did not use ability grouping.

Prior to and at the time of the suit, those classes that were ability-grouped at the kindergarten through eighth-grade level included a disproportionate number of African-American students in the low-ability groups. A variety of experts testified that the use of ability grouping has an adverse affect on students who are assigned to the low-ability group.

The federal district court ruled that, while ability grouping is not unconstitutional per se, a school district that has not achieved unitary status must carry the burden to justify that its practice is not based on the present results of past segregation or that the use of ability grouping will remedy such results through better educational opportunities. The school district failed to meet this burden with regard to the use of ability grouping. Furthermore, the plaintiff was able to establish that the use of ability grouping at the time of court-ordered desegregation was a continuation of racial segregation by class in the low-ability groups.

While finding the ability grouping plan to be in violation of Fourteenth Amendment equal protection guarantees, the court found no such violation in special education class placements. The court noted that special education programs do not operate to continue the results of past discrimination since they are designed for children with identified learning disabilities. School districts in Arkansas that have an over-representation of African-American students in such classes must submit a plan designed to correct that over-representation with the state department of education.[6]

District's Ability Grouping and Tracking Contributes to Board's Segregative Intent

A local Illinois citizens' group sued a school district as the result of the district's development of a school reorganization plan that had been adopted in 1989. The group charged that the district had engaged in a pattern of systemwide intentional segregation and that the plan was intended to perpetuate that system, particularly through its ability grouping and tracking plan for students.

A federal magistrate was assigned to the case in order to work out a settlement agreement between the parties, but no agreement could be reached. The magistrate undertook extensive fact-finding with regard to student placement, pupil assignment, quality of school facilities, and the proposed reorganization plan. The district objected to the magistrate's findings and sought review in the federal district court.

The federal district court emphasized that to establish a violation of equal protection of the laws under the Fourteenth Amendment, the plaintiff must show that governmental authorities created or maintained racial segregation in schools and that their actions were motivated by segregative intent. Circumstantial evidence can be used to establish the segregative intent, and that evidence supported a finding that the school district intentionally used ability grouping and tracking practices to racially segregate students. Evidence included showings that the district had placed a disproportionate number of minority students in the lower-ability tracks and had assigned minority students to lower tracks when their achievement scores qualified them for a higher track, even though the district placed similar white students in the higher track. The court also emphasized that the district had historically manipulated attendance areas to maintain racially identifiable schools, and that it maintained segregative conditions through policies regarding the construction of new schools and the allowance of student transfers to schools within the district.[7]

Affirmative Action in Lay-Off Decisions Violates Equal Protection

A New Jersey teacher challenged the local district's affirmative action plan because of its preference for minority employees in the selection of employees for lay-offs. The plaintiff in the lawsuit, a white, female business education teacher, was laid off instead of a black female teacher in the same department. The selection was based solely on the district's plan for equal employment opportunity in the district. The plaintiff challenged her selection for lay-off because she had the same amount of seniority in the district as the teacher who was retained. Typically, a seniority tie would lead to drawing lots, but in this case, the board chose to give preference to the minority teacher on the basis of the district's affirmative action policy.

The federal district court ruled that there was no legal justification for the affirmative action plan, and granted the plaintiff's motion to enjoin the plan's implementation. In its analysis, the court looked at two issues: First, was the affirmative action plan prompted by concerns that justified the implementation of the plan? Second, did the plan unnecessarily trammel the rights of other employees?

The school board had not adopted its affirmative action plan to remedy the results of prior discrimination or to rectify an identified underrepresentation of minorities within the school system. Rather, it had adopted the plan solely for

the nonremedial purpose of promoting racial diversity as an educational goal. When considered from this perspective, the court ruled that the rationale would not support a race-conscious affirmative action plan.

Courts have consistently approved hiring policies related to affirmative action, but because the preference policy applied to lay-offs, it had a direct discriminatory effect on an employee and violated the second element in the court's inquiry as well.[8]

District's Failure to Implement African-American Curriculum Does Not Violate the Civil Rights Act

A class action suit on behalf of all African-American students in New York City public schools was brought in a federal court in order to remedy alleged bias in the public school curriculum. The plaintiffs contended that the curriculum of the city schools injured African-Americans because it was systematically biased against them, distorted and demeaned the role of African-Americans, and excluded the existence, contributions, and participation of African-Americans in the various aspects of world and American culture, sciences, history, arts, and other areas of human endeavor. The plaintiffs asserted claims under both Section 1983 and Title VI of the Civil Rights Act of 1964, arguing that the curriculum had a disparate impact on the plaintiffs' self-esteem and ability to learn.

The federal district court refused to grant an injunction barring the school system from perpetuating the allegedly racially discriminatory aspects of the curriculum. The court emphasized that it would not be enough to show that the curriculum was adopted with knowledge of its detrimental effects; rather, the plaintiffs must prove that the curriculum was adopted *because* of its detrimental effects on African-Americans. In other words, it is not enough to infer intentional discrimination in this context; intentional discrimination must be proved. Although the plaintiffs established that the city board of education had adopted a Holocaust curriculum and an Italian Heritage curriculum, and had failed to adapt the curriculum to reflect the existence and contributions of African-Americans, these proofs failed to support an inference of intent to discriminate.[9]

Condom Distribution Violates Parents' Liberty Interest in Raising and Educating Their Children

A New York state appeals court ruled that high schools are prohibited from dispensing condoms to unemancipated minor students who request them without the prior consent of parents.

The condom distributions were part of a program of AIDS education adopted by the New York City Public Schools. In addition to classroom instruction, the program included a component that made condoms available through established health resource rooms staffed by trained professionals. The students who requested condoms had to be given personal health guidance counseling with regard to the use of the condom and the consequence of use or misuse.

When parents challenged the board policy, the state appeals court rejected claims that the policy would violate free exercise of religion, but did acknowledge that the policy came under provisions of state law requiring parental consent. The court agreed with the parents' claim that the law fell under provisions of state statutes which specify that "health services" cannot be provided without the consent of the parent. Going further, the court reasoned that the condom availability

policy impermissibly trespassed on parental rights by substituting city school board authority to stand *in loco parentis* without a compelling necessity. The court found that the provisions of liberty protected by the Fourteenth Amendment would grant to parents an interest in rearing and educating their children in accord with their own views. The court found that the policy was laudable, but not essential, and held that the policy intruded into the relationship between parent and child.[10]

Administrators

Public school administrators are distinguished from other school employees by their unique contractual relationship with the district board and their leadership responsibilities. Provisions for selecting, hiring, evaluating, and disciplining or dismissing administrators often differ from those for other professional employees. For example, administrators typically do not have tenure unless they are specifically given that entitlement under statute or board rule. Constitutional protections associated with free speech, free association, and due process of law apply to administrators, as do provisions barring discrimination. However, the entitlements and authority of administrators are often highly specific to the laws and regulatory standards of the particular state.

Superintendent's Oral Agreement Fails as a Contract of Employment

An Iowa school district superintendent brought an action against the local school board for specific performance of an oral contract to extend the superintendent's employment.

The superintendent had been employed in the district since 1974 under a series of one-year contracts. His last validly executed written contract was to end in June 30, 1991. In March of that year, the district board began to question whether to continue the superintendent's employment. Since state law required that the one-year contract be extended automatically for another year unless the superintendent was terminated and granted a due process administrative review or his contract was modified by mutual agreement, the board embarked on termination proceedings. When termination proceedings appeared to be protracted, the board reconsidered and began settlement negotiations with the superintendent. When settlement terms and a new contract were near completion, the superintendent through his attorney submitted a revised document to the board, but the board hesitated to approve the document and substituted new proposals. At the end of the existing contract, the superintendent chose to pursue a claim that a new contract had been created rather than to contest the board's termination decision.

The Supreme Court of Iowa ruled that an oral agreement to extend an employment contract was unenforceable. State statute law required that employment contracts with administrators must be in writing, but even without this provision, the specific terms of the alleged agreement were not fixed. The superintendent's theory was that he had an oral contract at the time his attorney submitted the revised document to the board. However, the court noted that several terms were still uncertain. For this reason, the court concluded that terms were too vague to be enforced and refused to recognize that a contact had been created.[1]

Supervisor's "At Will" Status Permits Termination at Any Time

A North Dakota supervisor of transportation and food service for a local school district

brought action against the school board for wrongful termination and defamation.

The supervisor was employed in the district in 1971, and in 1974 he became the supervisor of transportation. In July of 1989, he assumed the additional responsibility of food service, and the title of his position was changed to that of supervisor of transportation and food service. At the same time, the board changed the position from that of a professional contract employee to that of a classified employee, grandfathering in the supervisor with a salary that exceeded that of the classified employees within the district.

During the next year, the employee was subject to criticism by the members of the board. In one instance, a board member stated at a regular meeting that the supervisor cost the district money, ran the bus system in an irresponsible manner, and managed a sloppy program with no accountability to anyone. In May of 1990, the supervisor was notified that his position would be terminated as of June.

The Supreme Court of North Dakota ruled that the supervisor was an at-will employee who could be terminated at any time. Under statute law, a school board employee who is employed without a definite term of employment is presumed to be "at will." The court examined the personnel manual and policies of the district in order to make a determination on the supervisor's status. The board had changed the employee's position title to that of a classified employee, and the position was listed as a classified position in the district's salary and benefits package. Given this information and the testimony of the district's business manager in corroboration, the employee's at-will status was confirmed and the decision to terminate employment was affirmed.

The supervisor's claim of defamation by the board member was rejected on the grounds that a board member's statement at a meeting of the board, where pertinent to matters before the board, is absolutely privileged. The privilege from liability for defamation was based upon the state's public policy that communications before the school board are so important to the public that free and unrestricted exchange of information requires legal protection.[2]

Principal Challenges Suspension for Allowing Student to Pray over a School Intercom

A Mississippi high school principal was suspended by the board for six months for lack of professional judgment after he permitted a student to pray over the school intercom system. "Lack of professional judgment" was considered by the school board to be within the meaning of suspension for "other good cause" under state statute laws. A lower court decision reinstated the principal, and the board appealed, requesting that the state supreme court stay the order for reinstatement until a full review could be conducted to determine whether the board's decision was arbitrary and capricious.

The Supreme Court of Mississippi ruled that the school board had failed to demonstrate the irreparable harm needed to obtain a stay pending appeal of the reinstatement order. The board had claimed that the principal's effectiveness in carrying out board policy would be diminished if he did not serve the entire suspension. However, the court ruled that this claim was insufficient to show irreparable harm. Since the initial order reinstating the principal came after he had just two months remaining on his suspension, it was also likely that the entire suspension period would have passed before the court could consider the merits of the suspension. Furthermore, the court

concluded that the board had not made a strong case that the principal's action, described as a lack of professional judgment, would meet the requirement for "other good cause" under the law.[3]

Director's Conduct Not Found to Be a Persistent Violation of School Law

The director of a vocational-technical school in Pennsylvania appealed his dismissal as director by the local board.

In the incident that precipitated the dismissal, the director, who was a tenured member of the professional staff with an unblemished record as director for the previous 19 years, was part of a team of professionals who were attending an inservice program. One of the rules of the program was that attendance was required at all scheduled classes, and if any member of a team missed a session, the team would not be permitted to participate in the remaining classes. When the director's team missed a session, the director sought out two different inservice coordinators to request permission to attend the remaining classes. Heated discussions ensued, and both coordinators testified that the director used threatening language and displayed a clenched fisted in a threatening manner. As a result of the two separate incidents in which inservice coordinators were threatened, the board of the school dismissed the director.

On appeal, the director contended that charges of persistent and willful violation of school law were not supported by substantial evidence in the dismissal decision. The state appeals court agreed, holding that the two incidents, coming less than three hours apart, would hardly rise to the level of "persistent," whether or not the court chose to regard the conduct as willful or a violation of school law.

Persistency is held to exist when the violation occurs either as a series of individual incidents or as one incident carried on for a substantial period of time. The board of the school failed to establish this requirement in order to justify the dismissal.[4]

Supervisor Found to Be an "Equal Opportunity" Harasser

Employees of a Wyoming trade school brought a sexual harassment claim against the school for instances in which a supervisor had made sexually abusive remarks to four different employees.

In one instance, the supervisor had repeatedly made sexually abusive remarks to a husband and wife employee team who resided on the trade school campus. In that instance, the supervisor had typically said that he could do a better job of making love to the female employee than could her spouse. In another case, the supervisor had incessantly subjected a male employee and his wife to similar harassment, including offering the wife 100 dollars to come and sit on the supervisor's lap. In the third case, a pregnant female employee was subject to a continuing and persistent series of sexual advances. In all the cases, the employees claimed that they believed complaining would be futile, since the supervisor's employers witnessed the behaviors and gave every appearance of condoning the conduct. In defending against the charges, the school contended that the supervisor harassed both male and female employees alike, and therefore he could not have discriminated against the employees based on gender.

The federal district court ruled that a Title VII claim for sexual harassment was not foreclosed by the fact that the male supervisor's verbal harassment was allegedly directed at both male and female employees. Title VII affords employees a right to work in an environment free from discriminatory intimidation, ridicule, and insult. If the conduct is sufficiently pervasive to alter the condition of the victim's employment and create an abusive working environment, then harassment is established. The defendant's argument raises the specter that a "bisexual harasser" might avoid the law's sanction, but the court took a different view, concluding that equal harassment of both sexes does not escape the purview of Title VII. The court considered the supervisor "an equal opportunity harasser" whose remarks were gender-driven.[5]

Administrator Fails to Establish Claim of Sex Discrimination

A Florida food service director sued the local school board, alleging that she was denied promotion to director of vocational services and then wrongfully terminated as food service director because of her sex.

During an eight-year period in which she served as food service director for the school district, the employee received generaliy positive evaluations; however, her relations with food service personnel were regarded as abrasive and negative. In 1989, several workers had complained about the director's treatment, and the school district superintendent had discussed these complaints with the director. The superintendent noted that the director did not think highly of the cafeteria workers, and treated them with arrogance and disdain. However, the director's annual contract was renewed for the 1989-90 school year.

At this same time, the district announced an opening for director of vocational services, and the food service director was one of five people who applied for the position. During her interview for the position, the director did not answer some questions dealing with vocational education, indicating that her background was in general administration. She also failed to clarify for the committee what she would do to complete the required course work for her certificate in supervision of vocational education in a timely manner. The director was not selected for the position, and in the following year, her contract as food service director was not renewed.

The federal district court ruled that the director failed to make out a *prima facie* case of sex discrimination in the denial of promotion or the decision not to renew her contract. Furthermore, even if she established a *prima facie* case, there was sufficient evidence from her personnel record and from her contacts with the superintendent about her negative attitude and abrasive personal style towards employees to justify the decision not to select her for the position. The decision not to renew was not based on sex discrimination, since the new director of food services was also a woman.

The court further found that the district had a legitimate, non-discriminatory reason for failing to promote the director to the position of vocational services director. Since the hiring committee needed assurances from the applicants that they could attain vocational certification, the director's failure to provide a satisfactory assurance was interpreted by the court as evidence that she was not qualified for the position.

In addition, the court rejected the director's contention that she was not renewed in retaliation

for pursuing a sex discrimination claim with the Equal Employment Opportunity Commission related to the promotion. In reviewing the evidence, the court noted the nonrenewal decision was made in March of 1990, and the EEOC complaint was made in June of that year.[6]

African-American Administrator Establishes Claim of Race Discrimination in Employment

An African-American director of school district programs in a Florida school district brought a claim of race discrimination against the district and the superintendent.

The director asserted in her complaint against the district that she was reassigned from her position as Title I coordinator without her consent, given unwarranted poor evaluations, and subjected to continuous harassment by the superintendent. She alleged that she was given less authority than other directors in similar positions. Further, to establish a nexus between race and the allegations of disparate treatment, the director asserted that she was replaced in her previous position by a white male, and that she was the only black director in the school district. In response to the complaint, the district and the superintendent moved for summary judgment.

The federal district court ruled against the district and superintendent, and refused to grant the motion for summary judgment, allowing the case to continue to trial on its merits. The court reasoned that the director had made out a *prima facie* case of race discrimination under Title VII, and that with so many nebulous questions of motivation and intent to be addressed in the director's complaint, a trial would be necessary.

The plaintiff carries the burden to establish a *prima facie* case, and must ultimately prove discriminatory intent. However, in this case, the district offered no evidence of a legitimate, nondiscriminatory reason for the alleged disparity in treatment, and the court reasoned that the director should have the opportunity to persuade the court that the school district intentionally discriminated against her on the basis of her race.[7]

Finance

The state's commitment to provide public education is found in state constitutional provisions and statutory enactments. Revenue collection and allocation systems are subject to review under provisions of state and federal constitutional standards, particularly those involving uniformity, equity, and adequacy of public education.

Bond issues, management of accounts, and allocations under state or local board authority are regularly challenged by citizens and taxpayers. Thus, judicial scrutiny ensures that school districts manage the funds allocated by government in ways that achieve the purpose for which the funds were allocated. School boards and their officers are held to strict accounting for use of funds and for the realization of both constitutional and statutory mandates.

New Hampshire's Constitution Obligates State to Provide Constitutionally Adequate Education

Five "property poor" school districts in New Hampshire challenged the legislative provision for public school funding, contending that the state had failed to meet its state constitutional mandate to provide for public education. A lower court dismissed the claim, finding that the state constitution imposes no qualitative standard of education that must be met by the state. The districts appealed, seeking an interpretation of the state constitution that would impose a duty on the state legislature to provide a constitutionally adequate education to every child in the public schools of the state and to guarantee adequate funding.

The Supreme Court of New Hampshire ruled that the state's duty to provide constitutionally adequate education and to guarantee adequate funding extends beyond mere reading, writing, and arithmetic, and includes broad educational opportunities needed in the present society to prepare citizens for their role as participants and as potential competitors in the marketplace of ideas. In contrast to the view of the lower court, the state's highest court held that the state constitution's "Encouragement of Literature" clause imposed a significant duty on the state. The clause stipulates,

> Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantage of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators ... in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufacturers, and natural history of the country ...

The court noted that few state constitutions are as elaborate in defining the state's responsibility to educate its citizens as is New Hampshire's. Only Massachusetts, which shares a common history of constitutional adoption with New Hampshire, offered an interpretation of constitutional provisions that could be considered in interpreting the New Hampshire constitutional

mandate. The court emphasized that the duty to "cherish" is not merely a statement of aspiration; rather, the statement imposes a duty that the state provide an education to all its citizens and that it support all public schools.[1]

Virginia Constitution Held Not to Mandate "Substantial Equality"

Students and school boards in Virginia brought suit against the state, alleging that the state constitution mandated "substantial equality" in spending and programs among school districts.

Virginia maintains a minimum foundation program at the state level, giving local school districts considerable leeway to provide additional funding. In the 1989-90 school year, this led to disparities of as much as $4,500 in per pupil spending between school districts.

Eleven public school students and seven local school boards sought to challenge the existing school funding system as a violation of the state constitution, contending that the constitution required the state to provide educational opportunity substantially equal to that of children who attended public school in wealthier districts. The state sought to dismiss the suit on the grounds that equal spending and instructional resources in each of the school districts within the state was not mandated by the state constitution.

The Supreme Court of Virginia ruled that, although education is a fundamental right under the state constitution, the constitution does not mandate substantial equality of payments or programs within the state. The court held that the phrase of the state constitution calling for the state to ensure opportunity for people to develop to their fullest "by an effective system of education throughout the Commonwealth," does not impose a requirement that there be "substantial equality" in spending or programs. Despite constitutional requirements for public schools of "high quality," the court regarded this phrase as merely aspirational, subject to standards of quality and funding that the legislature could impose. Nowhere in the constitutional article is there any express requirement for "substantial equality" in spending or programs. The court held that while the elimination of substantial disparities in per pupil expenditure among districts may be a worthy goal, it is not required by the state constitution.[2]

Federal Court Could Order State to Help Pay for Magnet Schools and Salary Increases Under Desegregation Plan

The State of Missouri appealed a desegregation order of a lower federal court, which imposed costs for the operation of magnet schools and increased salaries as part of its order. The state's appeal was based on the position that imposing the costs as part of the desegregation order would mean that the state would be jointly responsible for meeting those expenses.

The court had imposed special remedies on the Kansas City School District in order to provide for quality programs that would counter the effects of segregation and discourage white flight from the urban area schools. Among its arguments, the state contended that the district court was imposing the ordinary operating costs of running district schools on the state as part of the desegregation order, and that the state should only be liable for the additional expense of creating magnet programs within the schools.

The Eighth Circuit Court of Appeals held that the costs of operating magnet schools within a school district operating under a desegregation

order could be designated as desegregation expenses for which the state would be jointly liable, even though the school district would normally have been responsible for those costs. The magnet schools were the cornerstone of the desegregation plan, and the court noted that the district would be unlikely to have the necessary funds to meet the expenses of such programs without assistance from the state.

Furthermore, the federal appeals court ruled that the district court could approve salary increases for school district employees in order to further the goals of improving educational opportunities for the victims of unconstitutional segregation and to regain some portion of the white students who fled the school district to avoid desegregation. In light of the fact that additional salary funding was necessary to implement aspects of the desegregation plan, the court had the necessary authority to approve the salary increases.[3]

State Cannot Designate a Portion of General Revenue Taxes to Pay Off School Buildings

The West Virginia Legislature sought to dedicate taxes that historically went into the state general revenue fund to a separate fund that would retire school building authority revenue bonds. The state constitution places limits on state indebtedness through clauses known as debt limitation provisions. In this instance, the legislature hoped to earmark taxes that flow into the state's general revenue fund to pay off revenue bonds used to build schools.

The state supreme court ruled that the legislature could not designate a portion of tax revenues that go into the general revenue fund to retire revenue bonds, because to do so would violate the debt strictures of the state constitution. Debt strictures in the constitution emphasize that a special fund to retire bonds cannot come from existing taxes that are deposited in the general revenue fund. Under this construction, school building authority bonds that are to be liquidated by dedicating a portion of the funds raised through the existing consumer sales tax, which is a general revenue fund tax, create new debt and violate the restriction on the creation of state debt.

However, the court did propose that the legislature create a new tax source or increase the amount to be paid on an existing tax account. This new or increased amount could then be used to liquidate revenue bonds. In other words, the legislature could increase taxes or create a special tax to pay off revenue bonds over time, but it could not obligate future legislatures to pay off revenue bonds out of existing taxes earmarked for general revenue.[4]

General Education Forfeiture Provisions in State Funding Law Are Subject to Court Review

Michigan state aid statutes provide for forfeitures when school districts fail to meet the requirement for a minimum of 180 days of instruction. Due to a protracted teachers' strike, a local school district failed to meet the 180-day requirement, but did meet a state department of education requirement for the provision of special education services over a 230-day period. In determining the amount of forfeiture under state school finance laws, the state reduced funding to the district by computing the number of students in both general and special education. The district appealed.

The state appeals court considered legislative intent with regard to the provision of instruc-

tion in both general and special education, and concluded that it was beyond the purpose of the forfeiture provisions and inconsistent with state laws to penalize the special education programs of a school district that met the full 230-day special education program because the district's general education program failed to meet the 180-day requirement. The court took the position that the state legislature could not have intended a reduction in special education program funding for a district that met the 230-day requirement because that same district failed to meet the 180-day requirement in general education.[5]

Due Process Not Denied by Board's Decision to Reject Low Bidder

A local school board in South Dakota issued a request for bids on several school site renovations. At the time of bid opening, the board did not select the low bidder, explaining its decision on the grounds that the low bidder was not regarded as the lowest responsible bidder because of previous problems between the board and the bidder on a school construction project. The bidder then sued the board, claiming that the decision not to award the contract to the low bidder violated constitutional rights to due process of law.

A federal district court emphasized that to prove a violation of due process rights, the plaintiff must prove a deprivation of constitutionally protected property or liberty. Since the board had voted to award the contract to another bidder and had characterized the low bidder as other than the "lowest responsible bidder," the question before the court was whether, under state law, the bidder had a property interest in the contract or was otherwise stigmatized by the decision to deny the contract.

The court ruled that the bidder had no protected property interest in the school building renovation contracts under state competitive bid law. Without a property interest, there could be no deprivation of due process in violation of the constitution unless it were proved that the board's decision violated the bidder's liberty interests. The court held that the refusal to award the contract to the low bidder did not implicate the bidder's liberty interests to the degree necessary to establish a constitutional claim, since the district's action did not foreclose the bidder from pursuing other contracting opportunities.[6]

Teachers and Other District Employees

As public employees, teachers and other school employees enjoy constitutional and statutory protections relative to their jobs. Rights to free speech and association, due process of law, and equal protection of the law have traditionally received the greatest judicial scrutiny in cases involving adverse employment decisions affecting these employees. Statutory provisions include federal anti-discrimination provisions and state statutes ensuring due process, creating tenure or continuing contract, requiring good cause for dismissal, and establishing standards and procedures for evaluation, selection, and corrective discipline.

Teacher's Reprimand and Transfer Do Not Implicate First Amendment Rights

A Louisiana high school teacher brought action against the school board, alleging that she was subject to reprimand and transfer in retaliation for her exercise of academic freedom.

The teacher had initiated a student project in her history class that included a student newspaper, which was developed and sold to students as a parody. The newspaper included columns advocating that a bored student drop out of school, that students cheat on tests, and that students practice birth control.

The school principal confiscated the newspapers, prohibited further distribution, and directed the teacher to respond to questions about the newspaper, including a detailed financial report. The teacher responded, but the principal regarded the responses as incomplete. The principal recommended a formal reprimand and transfer to a middle school in the district, and the district personnel office agreed to these steps.

In response to the teacher's claim of a denial of academic freedom protected by the First Amendment, the federal district court granted summary judgment for the school board. The Fifth Circuit Court of Appeals agreed, finding that the teacher failed to establish her claim that the reprimand and transfer violated First Amendment rights. The school district's stated reasons for the transfer and reprimand did not involve the assignment itself, but had to do with the teacher's failure to properly supervise and structure the project once assigned, willful neglect of her duties as a teacher, and violation of school policy against sales of goods or services on school property. Since inadequate supervision, willful neglect, and violation of the school's financial policy were the basis for the reprimand and transfer, the teacher must provide some evidentiary basis for the contention that the actions violated First Amendment rights. Since she failed to rebut the legitimate reasons offered to justify the adverse employment decision, the court affirmed the summary judgment motion for the school district.[1]

Teacher's Conflict with Co-Worker Outweighs Any Claim of Free Speech

An Illinois high school teacher claimed she was denied various administrative positions because of her exercise of free speech.

The teacher had been in the district for 14 years and had served as the chair of the reading department and as the Chapter 1 coordinator for 10 years when she reported student complaints of sexual misconduct involving a co-worker. The district conducted an investigation through the office of the school principal, and a reprimand and warning were issued to the co-worker. The district did not report the inquiry or its resolution to the state agency charged with investigating such complaints, but the teacher independently reported the allegations to the agency and noted the student's allegations in a harshly worded evaluation of the co-worker's performance.

Within a month, the teacher was notified by the district that the reading department was being merged with the English department and the new department would be chaired by a member of the English department. The teacher's later applications to serve as Chapter 1 coordinator and associate chair of the English department were denied. Although she had regularly been praised and reappointed each year of her career, her annual evaluation reported problems with personnel and concerns about her administrative effectiveness. In light of these problems, both the principal and the superintendent agreed that the teacher could not be recommended for leadership positions.

The federal appeals court affirmed a lower court holding granting summary judgment to the school district, holding that the teacher failed to meet her burden to establish that the call to the state agency was a substantial or motivating factor in the decision not to renew her administrative position. The district produced evidence that planning for a merger of the two departments had been ongoing for over a year and was not made spontaneously in response to the teacher's exercise of free speech.

However, even if it were true that the call to the state agency had been a substantial factor in the decision not to reappoint the teacher, the court reasoned that the teacher would not prevail on her claim. To explain this position, the appeals court noted that there was a clear conflict between the teacher and her co-worker, and it was this conflict that motivated the decision to merge the departments. This conflict, along with the teacher's deteriorating working relationship with the principal and other school officials, constituted a legitimate basis for not reappointing her.[2]

Teacher's Criticism of District Hiring Practices Is a Matter of Public Concern and Constitutionally Protected

A Connecticut substitute teacher brought an action charging that school officials retaliated against her for exercising First Amendment free speech by refusing to hire her for full-time teaching positions and by failing to regularly employ her for available substitute positions.

The teacher had complained to an administrator responsible for hiring substitutes that the school district did not use fair calling procedures, and that other available substitutes were called more regularly than she was for available positions. The district official wrote a report of the incident, describing it as an unwarranted criticism and indicating an intention not to call the substitute again. Several months later, the substitute teacher complained to the superintendent and board chairman that a teaching vacancy had been filled from within the district without a posting of the position's availability. These same complaints were raised at intervals over a period of four years, during which time the teacher applied but was not hired for any full-time teaching position.

The federal district court initially determined whether the substitute teacher's speech was constitutionally protected. The court emphasized that if the speech was on matters of public concern, then it would be constitutionally protected. The court reasoned that although the speech involved criticisms of board hiring procedures that effectively denied her employment opportunities, these criticisms went beyond her personal interest to complain about hiring practices that precluded consideration of other candidates. The teacher could be seen as a taxpayer and a parent, complaining about matters of public concern related to the quality of teachers hired by the district.

Having determined that the teacher's complaints did involve matters of public concern and were thus constitutionally protected, the court then turned to the question of whether the remarks were a substantial or motivating factor in the district's employment decisions. In denying the district's motion for summary judgment, the court noted that there were genuine issues of material fact related to whether the district purposely avoided calling the teacher when substitute positions were available. Furthermore, the teacher presented evidence that less-qualified teachers were employed to fill vacancies for which she had applied. This raised a triable issue of fact that would defeat the school district's request for summary judgment.[3]

District Administrative Hearing Fails to Meet Requirement for Due Process

An Iowa industrial arts teacher with 19 years of unblemished performance became involved in an altercation with a student in his class. Whether intentionally or because of horseplay that got out of hand, the student struck the teacher in the chest, causing him to fall backward and hit his head. The teacher, allegedly in self-defense, kicked the student and slapped him in the face.

The incident was reported by the teacher and students in the class, and the principal initiated an investigation that involved a school district official designated to undertake such inquiries. After a finding that it was likely that an incident of physical abuse involving a teacher had occurred, a second investigation by a private investigator hired by the school district was undertaken.

As a result of the investigations, the teacher, who had been placed on paid suspension in the interim, was asked to meet with an administrative committee reviewing the evidence and the conclusions of the investigators. At that meeting, the teacher was allowed to present his version of the incident. Following further deliberations, the committee notified the teacher of a suspension without pay for three days and a transfer and reassignment until another position in industrial technology at another school became available.

In challenging the provision of due process provided in the administrative hearing, the teacher successfully established that his liberty and property interests were affected and that the due process provided to him failed to meet the constitutional standard required by the Fourteenth Amendment. The Eighth Circuit Court of Appeals ruled that the allegations of unjustified abuse of a student were sufficiently stigmatizing to the teacher's reputation and good name to implicate a liberty interest, and that the suspension and reassignment implicated his property interests as a continuing contract teacher. In deciding what process is due, the court noted that the teacher had not been allowed the opportunity

to present witnesses in his own behalf or to challenge the testimony of other witnesses at the hearing. The court characterized the administrative review as a meeting, not a hearing, and found that the investigations could not be relied upon by the district as offering a meaningful opportunity for due process of law.

As an aside, the court noted that it was ironic, in a day when students often carry weapons to school, that when a student admittedly attacks a teacher, the result is discipline of the teacher but not of the student.[4]

Teacher's Offensive Comments Justify Dismissal for Insubordination

A Colorado tenured teacher was dismissed for neglect of duty and other good and just cause. A state hearing officer determined that the middle school industrial arts teacher and coach had directed offensive comments to students in his classes. Several students reported or confirmed hearing the teacher make comments that were inappropriate and sexual in nature. Among the specific incidents, the teacher, in response to a request for wood screws, would say "Everyone can use a good screw"; and when observing female students not working, he would stand a screwdriver on end and say, "If all you girls are going to sit around, sit on this."

The teacher was reprimanded and advised that any further instances would result in dismissal. However, in the next school year, other cases of a similar nature occurred, including one incident in which the teacher allegedly placed his hand on a female student's back and snapped her bra strap, and several incidents in which female students reported that the teacher improperly touched their buttocks or placed his arm around a female student's shoulders.

At the hearing, the teacher was not permitted to present character evidence to rebut the allegation that he had snapped the student's bra, because the hearing officer ruled that he was not charged with lack of character, but rather with insubordination and neglect of duty.

The state appeals court found that it was not reversible error for the hearing officer to deny character evidence in the hearing. A review of the record established that the teacher had called a number of teaching colleagues and former students who testified on his behalf, and the hearing officer noted in the record that the teacher established the fact that he was a person of good character, highly respected by the colleagues and students he called to testify. However, even if the refusal to permit evidence of character might have compromised the allegation that the teacher had snapped the student's bra, it would not contradict the other incidents that were presented in support of the dismissal. The court found that the cumulative record more than substantiated the basis for dismissal on the charges.[5]

Classroom Videotape Characterized as a Single Episode, Insufficient to Justify Termination

A tenured Kansas teacher was terminated by the local school board, and requested a hearing on the termination before a hearing committee. The essential basis for the termination was a videotape shot by students in the teacher's high school art class. The teacher allowed the students to produce their own video, the first part of which was supervised by the teacher. Although this first part contained skits that included a condom commercial, there were no objections to its content. However, the second part of the video involved students in unsupervised activities

and contained instances that were characterized as bad taste and sexual harassment, including footage in which students portrayed Saturday Night Live skits, attempted to embarrass each other with zoom shots of crotch areas, and told of unsavory off-campus activities. During this videotaping, the teacher cautioned the students not to let the activities get out of hand, but busied himself at other tasks or went outside of the classroom to help other students.

Although the hearing committee agreed that the teacher did not control the classroom in a manner consistent with what was expected, it concluded that the evidence did not establish just cause for termination. Basing its decision on the hearing record as a whole, the committee found that the activities shown on the videotape were isolated and did not reflect the teacher's ability or past conduct. As a consequence, the committee determined that the school board's evidence failed to establish good cause for termination.

The state appeals court agreed, noting that in Kansas the board makes the decision to terminate, but the hearing committee is a fact-finding committee that must decide whether the reasons given by the board for termination constitute good cause. Although the court admitted that this was a close case, it concluded that the committee's decision was supported by substantial evidence, and affirmed the position that the videotape constituted a single episode, which was of very short duration, and under the circumstances did not justify the teacher's termination.[6]

Willful Neglect of Duty Requires No Opportunity for Remediation

A Louisiana special education teacher was subject to a semester suspension without pay for showing a videotape called "Boss" to his high school special education class. The videotape was rated "PG" (Parental Guidance) and contained repeated racial epithets, minor obscenity, a brief nude scene, and racial stereotypes in the context of a Western. In showing the film, the teacher made no effort to introduce the content, discuss the film with the class prior to viewing, or link the subject to the topic of arts and crafts.

Following the showing, the principal issued a verbal reprimand but gave the teacher a satisfactory annual evaluation. However, the principal recommended dismissal to the superintendent after he learned that the board intended to undertake adverse employment decisions against two other teachers who had shown "R" rated films in their classrooms. The superintendent agreed to recommend dismissal to the board. The board, after a hearing, voted to suspend the teacher without pay for one semester. On review, a trial court ruled that the teacher should have been afforded an opportunity for remediation for his alleged incompetency and reversed the suspension undertaken by the board.

A state appeals court affirmed the semester suspension without pay and reversed the trial court decision. The court agreed that if the issue is incompetence, state law requires that an opportunity for supervised remediation is considered before a decision to dismiss. However, in this instance, both willful neglect of duty and incompetence were asserted as good cause, and the court concluded that the suspension was properly predicated on willful neglect of duty. The suspension was based on the view that the teacher had shirked his professional responsibility to use class time for teaching the designated subject matter, and had violated a school board policy by showing a film that contained coarse and offensive language. As a consequence, a rational basis existed for the board's and sanction.[7]

In a similar instance in Louisiana, a state appeals court ruled that the showing of an "R" rated film that contained violence and adult language to a junior high school class would not justify the teacher's dismissal, and that the appropriate disciplinary action would be a two-semester suspension.[8]

Teacher's Due Process Ensured Through Extensive Pre-Termination Investigations and Hearings on Use of Corporal Punishment

A tenured Pennsylvania school teacher had received regular written warnings about his use of corporal punishment over a period of three years. School district employees had repeatedly emphasized that the teacher's use of force with students violated school board policy, and had embarked on an extended program of progressive discipline with the teacher. This program included numerous meetings with respect to the teacher's use of corporal punishment and a recommendation that the teacher seek professional help. In one instance, the teacher was suspended without pay for five days.

On each occasion in which the teacher was alleged to have used improper force with students, school officials promptly conducted investigations, gave the teacher notice of the substance of complaints, and advised him on the nature of the evidence. The teacher appeared at numerous meetings and grievance hearings to contest charges of improper use of force and improper discipline, and was offered the opportunity to file written responses to allegations.

When these efforts did not prove successful, the superintendent suspended the teacher from employment with pay, and he was terminated by the board three months later. Consistent with state law, the decision of the district to dismiss the teacher was subject to arbitration at the election of the teacher. After the arbitrator ruled that the district had just cause for termination, the teacher appealed to a federal court on the grounds that he was denied due process in the course of pre-termination hearings.

The court found that the teacher had received proper notice and at least 10 opportunities to challenge the validity of pertinent complaints brought against him at the time the complaints were lodged. In its holding, the court concluded that the extensive pre-termination procedures employed to give the teacher an opportunity to know the charges against him and to respond to those charges met due process of law under the Fourteenth Amendment. Since the teacher elected, pursuant to state law, to have the propriety of his discharge determined by arbitration rather than by a full pre-termination school board evidentiary hearing, the provisions of due process prior to termination were met through the extensive process offered in each of the meetings provided to the teacher prior to his suspension and dismissal.[9]

Use of Sick Leave for Ski Trip Results in Teachers' Dismissal

Two Pennsylvania teachers were subject to dismissal proceedings when, after being denied requests for personal leave, they took sick leave to go on a ski trip.

The teachers' initial request for personal leave was denied, and they filed a grievance. After a hearing, the superintendent again denied the requests. The teacher's union then continued the grievance before the school board, but the request was again denied. On the week planned for the ski trip, the teachers called in and left mes-

sages on the school answering machine that they would "need to be off" for the remainder of the week. When they returned to work, they presented the superintendent with letters written by a clinical psychologist who purported to have evaluated both teachers and determined that "stressful life events" and "personal illness" required treatment and time off from school.

The superintendent suspended both teachers pending a school board hearing. The parties later agreed that the matter should be treated as dismissal from employment and opted for arbitration. In deciding the issue of whether there was just cause for the dismissals, the arbitrator sustained the grievances by the two teachers.

The state appeals court noted that a teacher's misrepresentations regarding his or her unexcused absences are properly the subject of immorality charges, and may also be considered in the context of "persistent and willful" misconduct. The board policy required that an employee submit a certificate from a physician that the employee was unable to perform duties during the period of the absence, and the court found that the letter from the psychologist failed to meet this requirement.

Given the nature of the misrepresentations and the failure of the employees to conform to the board policy, the court vacated the arbitrator's award and reinstated the board's dismissal of the employees. In the court's view, the arbitrator's award must be respected if it represents a reasonable interpretation of the labor agreement, but when the arbitrator's words exhibit infidelity to the agreement, courts have no choice but to refuse enforcement of the award.[10]

Failure to Comply with State-Mandated Evaluation Leads to Teacher Reinstatement

An Ohio teacher sought review of a school board decision not to renew her limited teaching contract.

The teacher was observed by a member of the professional staff on four occasions during the school year, and four separate written evaluations were submitted based on the observations. Although the school district administration recommended renewal of the teacher's contract, the board did not renew, and gave notice to the teacher that she would not be reemployed.

The teacher contended that the board did not follow the proper evaluation procedures required by statute. The teacher predicated her claim to reinstatement on the basis that the school code specified that two observations of the teacher being evaluated must be completed before a written evaluation can be completed.

The Supreme Court of Ohio ruled that the failure to undertake the statutory requirement for two observations for each written evaluation would serve as a ground for appeal and reversal of a nonrenewal decision. In making its decision, the court held that when a school board fails to comply with the evaluation procedures required under the school code, the teacher is entitled to back pay from the date the school board improperly chose not to renew her contract.[11]

Board Is Powerless to Rescind Contract Renewal in Reduction-in-Force

A Mississippi teacher-counselor was offered contract renewal at the end of the school year. In June, however, the teacher was given notice that his contract renewal was rescinded by

the board when it became clear that a budgetary shortfall would necessitate further reductions-in-force. The teacher's notification explained that the adverse employment decision was not a reflection of past performance, but "was necessitated by lack of funds." Budgetary shortfalls had already been weighted by the board in February, and a number of teachers had been notified then that they would not be renewed. However, the teacher-counselor had received notification that he would be rehired, and he had signed a contract for the upcoming year. When further budgetary shortfalls were found in early June, the board acted to rescind his contract.

The Supreme Court of Mississippi affirmed a lower court decision that reinstated the teacher, explaining that state statute law did not make appropriate provision for reduction-in-force under the circumstances described in the case. State law provided for suspension or removal of a teacher for "other good cause," and the board relied on this provision to justify its contract rescission. However, the court found that the statute was applicable only to personal misconduct of a teacher, and "good cause" refers to some dereliction of duty. The court held that the statute was not applicable to the teacher's situation. Under existing state law, the board was empowered not to renew a contract for a successive year, but once a contract had been offered and accepted, the board was powerless to rescind it.[12]

Thorough and Extensive Observation and Evaluation System Justifies Dismissal for Incompetence

A Missouri elementary school teacher challenged her dismissal on grounds of incompetence and inefficiency. The teacher had been employed in the district since 1974, but beginning in 1983 and continuing through 1985, classroom observations and evaluations by the school principal, assistant principal, and the assistant superintendent established that the teacher had problems with individualizing instruction, creating a positive learning environment, and communicating with parents and students in a positive manner. The principal informed the teacher that she should observe other teachers and attend teaching workshops, and the teacher did so.

Although some improvement was noted, administrators still found that the teacher was performing inadequately in the same areas, and they imposed a professional development plan on the teacher in May of 1991. The plan required readings and workshops on communications and instruction, guidelines for parent conferences, and classroom observations by teachers and administrators in which follow-up conferences were required.

When deficiencies continued and evidence surfaced that the teacher had problems maintaining classroom discipline, the teacher was issued a warning letter in October of 1991 which stated that the deficiencies must be corrected within 120 days or formal termination proceedings would be brought. In November, the principal and assistant principal met with the teacher to institute a new professional development plan that included classroom videotaping and videotape review sessions involving feedback to the teacher. Scheduled and unscheduled observations were undertaken, and at least 12 meetings were held to discuss performance. The teacher also participated in role-playing designed to illustrate effective communication and instruction techniques.

Although the teacher made some limited progress, school officials felt that her performance remained deficient in the targeted areas

and recommended dismissal. After extensive hearings, the board dismissed the teacher.

The state appeals court found that school district officials acted in good faith in their efforts to meet and confer with the teacher, and that the teacher's failure to maintain classroom discipline, provide adequate and individualized attention to students, and properly evaluate student performance was sufficient evidence of incompetence to justify the board's decision to dismiss. The court noted that state statute law requires a three-step process, including written warnings of deficiencies, meetings, and conferences to resolve deficiencies, and notice and hearing on charges justifying dismissal.

The teacher claimed bad faith on the part of administrators because she was asked to videotape her classes for the purpose of improving performance, but was not told that the videotapes would be used to evaluate her performance. She asserted that the use of informal, unscheduled observations of her classes was improper. Finally, she claimed that evidence of improvement in her performance was ignored by the administrators and the school board.

The court dismissed these claims, pointing out that the teacher was aware that her continued employment depended on her teaching performance, and classroom observations and videotaping were consistent with evaluating her performance. As to the evidence of improvement, the court found that incompetence is defined as the inability to perform professional teaching duties in a manner acceptable to the school board, and concluded that evidence of improvement would not, in itself, vitiate the board's conclusion that the teacher's overall performance fell below an acceptable standard.[13]

Failure to Hire Female as Full-Time Custodian Raises Triable Issue in Sex Discrimination Suit

A female school employee charged a Michigan school district with sex discrimination on the basis of its decision not to hire her for a position as a full-time custodian.

The employee was working as a substitute custodian when a position became vacant. The district posted the vacancy, and the substitute custodian wrote a letter to the supervisor of buildings and grounds indicating she would like to bid on the position. The position was then advertised in a local newspaper, and a male applicant who worked in a similar position at a nursing home was hired for the job. The part-time custodian contended that the school district's past practice had been to give priority to part-time custodians already employed by the district. She also alleged that the district treated female employees differently than male employees because it hired men as custodians and women as housekeeper-cleaners and cafeteria workers.

The trial court granted the school district's motion for summary judgment, holding that the substitute custodian's case was based on her subjective feeling that she was discriminated against. However, the state appeals court reversed, finding that the substitute custodian had met her burden to establish a *prima facie* case of sex discrimination. Such a proof requires only that the plaintiff prove that she was qualified for the position, but was rejected under circumstances giving rise to an inference of unlawful discrimination.

The evidence to support the claim came from a variety of sources. First, a school district employee stated in a deposition that he had heard the supervisor say "It will be a cold day in hell

before I hire any more women." While the supervisor denied making the statement, it was supported by evidence that he had not hired a woman since becoming district supervisor. Further, there was evidence that the hiring of the male candidate was a pretext for discrimination. The court noted that the supervisor's reason for hiring the male candidate was that he was the most qualified, but he conducted no interviews of the candidates to assess their knowledge and skills and did not contact any of the four finalists' previous employers except the current employer of the male who was selected for the job. The court concluded that the trial court had erred in granting summary judgment, and remanded the case for a trial on the claim of sex discrimination.[14]

District Authorized to Require Drug Testing of School Bus Driver

A school bus driver who refused to take a drug test brought a civil rights action against an Indiana school district when he was terminated for refusing to submit to the requirement. The bus driver asserted that he had been subjected to disparate treatment in being singled out for the drug test because he was African-American.

The school district had employed the driver for 10 years as a bus driver, but in the last two years of employment, district personnel had received several unsolicited complaints against him. In one instance, it was reported that the driver had been seen drinking alcohol and smoking marijuana in a car parked across the street from the main school bus depot. On another occasion, two teachers and a parent complained that the driver was under the influence of drugs or alcohol while he drove students on a field trip. When another complaint about the driver's drug use came to the attention of the district, he was directed to complete a drug test.

The federal district court ruled that the school district had a legitimate business expectation that it could impose drug testing on its school bus drivers, and the decision to terminate the bus driver for his refusal to submit to the drug test was a legitimate, nondiscriminatory reason for termination. The court noted that the driver had entered into an employment agreement that stipulated he was required to submit to a physical examination whenever the district requested. That the examination may include investigation for drug use is consistent with the state statute stipulating performance-related physical requirements for the position of school bus driver.

The court held that, when the district suspects that the driver of a school bus is not fit to carry out the his duties, it need not await confirmation through a disaster or the next scheduled physical examination. Furthermore, the court noted that testing of school bus drivers for drugs, even without suspicion, is not subject to constitutional attack. Because the state is able to articulate a special need for such a search, based on its interest in ensuring the sobriety of school bus drivers, any claim that the district was not authorized to conduct such a search is meritless.[15]

Aide's Failure to Inform District of Her Religious Belief Bars Her Claim of Religious Discrimination

A Mississippi teacher's aide was discharged for insubordination, stemming from her willful failure to conform to the dress code of the school to which she was assigned. When first directed to take off her beret, she explained that she was working in a portable classroom and would

get cold going from that classroom to the main building. The school principal advised that she could wear the hat when she was crossing between buildings, but not while in the classroom. Although she removed the beret and did not return to school with it for several weeks, she again began to wear the hat and was again directed to take it off while in the classroom. Her response to this directive was "Put it in writing." The aide again removed the beret, but began wearing African headwraps. A similar pattern ensued, with the principal directing the aide to discontinue wearing the headwraps and the aide complying for a period of time before undertaking the practice again. In the next phase, the aide periodically wore headwraps, allowed her hair to grow, affected dreadlocks, and discontinued washing her hair. When reprimanded for insubordination, the aide claimed that she was relating to her African-American heritage. After termination, the aide alleged that she was terminated because of headwraps and hairstyles she wore as an expression of religious belief.

The federal district court held that the aide failed to establish her claim of discrimination on the basis of religious belief. Although the aide provided considerable detail about her religious beliefs at trial, the court found that she never made her employer aware of her sincerely held religious beliefs when she was directed to discontinue wearing hats and headwraps in the public school classroom. During termination proceedings in the district, the aide had been asked to explain her reasons for her dress, but she never offered a religious explanation, nor when directly questioned as to whether this was a religious garb, did she admit that it was. The first instance of an asserted religious claim came at a grievance hearing held a month after the termination for insubordination. Even at that hearing, the aide failed to explain the nature of her religious beliefs and why her choice of dress reflected those beliefs. As a consequence of her failure to inform the employer of her bona fide religious beliefs, the school district could not be held liable for failing to accommodate those beliefs.[16]

District Successfully Challenges Teacher's Credibility in Sexual Harassment Claim

A New York teacher, hired to teach special education classes, was not renewed at the end of the school year. The teacher claimed the district's decision not to renew her employment was in retaliation for filing complaints of repeated instances of sexual harassment by the school principal, who, she alleged, had engaged in a pattern of unpermitted touching and unwelcome sexual advances during the teacher's employment. An investigation of the teacher's complaints had led to a hearing officer's determination that the complaints could not be substantiated.

The federal district court found that the teacher's claims of sexual harassment had not been proven and that the district had a legitimate, non-discriminatory reason for not renewing her contract. The teacher had the burden of proving the alleged harassment. The record showed that her complaints could not be substantiated, and furthermore, there was ample evidence that her credibility had been eroded. During trial, the district proved that the teacher had lied about several facts material to her employment with the district. She had deceived the district with regard to the status of her certification to teach in the field of special education, lied about arranging to take a physical examination required for employment, and fabricated a story that the

superintendent had authorized her to be late for work because of the commuting distance she traveled to school. The school district established that its decision not to renew was predicated on evidence that the teacher failed to complete required courses essential to recertification and licensing, as well as the teacher's history of deceiving district administrators about her employment status.[17]

The student's legal rights extend to constitutional and statutory guarantees related to free speech and association, privacy, due process of law, and equal protection of the laws. However, judges typically balance the interests of the state in maintaining the efficient operations of schools against the individual rights asserted by students or parents.

As the following cases illustrate, the authority of school boards and school officials in the exercise of control over students is judicially recognized. Courts have granted a generous measure of discretion, particularly where school officials articulate legitimate concerns for the physical health and safety of students or emphasize pedagogical concerns in rationalizing policy and practice. However, absence of affirmative steps by school officials to ensure the protection of students from physical harm has created new causes of action for deprivation of liberty under the Fourteen Amendment and sex discrimination under Title IX of the Education Amendments of 1972. These latter cases address molestation by school district employees and instances of peer harassment that create a hostile, sexually charged environment in schools. While judges have been cautious in recognizing claims, the risk of liability in these cases is rising.

Junior High's Policy on Distribution of Written Materials Creates Limited Open Forum

An Illinois junior high school implemented a policy prohibiting the distribution of written materials that were pornographic, libelous, or religious on school grounds. An eighth-grade student challenged the policy when she was prohibited from distributing religious materials on the school campus, and a federal district court declared the policy unconstitutional.

The school district then designed a new policy statement that said any student who wished to distribute more than 10 copies of any written material on campus must seek the permission of the school principal. The policy stipulated time, place, and manner constraints on distribution, requiring the material to be placed on a table near the school entrance for distribution between the opening and closing times for the school day. Students were prohibited from distributing material that would cause substantial disruption or violate the rights of others due to privacy invasion or libel. Materials that were socially inappropriate for the age and grade level of students, were primarily commercial, or could be construed as expressing religious beliefs or points of view that recipients might believe were endorsed by the school were also prohibited by the policy.

The Seventh Circuit Court of Appeals ruled that the school's new policy prohibiting distribution of more than 10 copies of written material primarily prepared by non-students was constitutional, as was the restriction on distribution of written material to a table near the school entrance. However, the court reasoned that providing a central space for distribution would not create any endorsement of the material made available, and concluded that restrictions on reli-

gious materials in the school policy were unconstitutional.

Although a junior high school may elect to operate as a closed forum, denying distribution of all non-school-related materials, the court concluded that if the school allows distribution of materials by students, then a limited open forum is created and the school cannot single out religious materials for exclusion.[1]

Principal's Censorship of Film Reviews Violates Student's Freedom of Speech

A New Jersey junior high school student challenged the school principal's decision to censor, prior to publication, two movie reviews he had submitted to the school newspaper. The student submitted reviews of two "R" rated films, *Mississippi Burning* and *Rainman*. The principal censored the reviews because the ratings required that a child under age 17 be accompanied by a parent or guardian to view the movies.

Despite concluding that the school-sponsored paper was not a public forum for the expression of student views, the state appeals court ruled that the school official violated the student's First Amendment rights by excluding the reviews from the school newspaper. In its reasoning, the court emphasized that the principal's censorship had nothing to do with the style or content of the reviews, but was predicated solely on the fact that the movies were "R" rated. To presume that all "R" rated films are inappropriate for junior high school students was inconsistent with the movie rating system's purpose, which is to alert parents to the need for discretion and scrutiny in deciding whether a movie should be viewed by children.

Educators do not offend the Constitution when they exercise control over the style and content of student speech in school-sponsored expressive activities, as long as the control reasonably relates to legitimate pedagogical concerns. However, when censorship has no valid educational purpose, the First Amendment is directly implicated.[2]

Court Raises Doubt About the Applicability of Free Speech to Students at the Elementary Level

Parents of an Indiana elementary school student brought a civil rights action against school officials who prohibited their daughter from wearing certain T-shirts while attending school. The shirts expressed the parents' complaints about the school, and included shirts that read "Unfair Grades," "Racism," and "I Hate Lost Creek." The school principal denied the child the right to wear the shirts, and the parents asserted a claim of denial of free speech under the First Amendment. The parents contended that their child had a clearly established constitutional right to wear expressive T-shirts to school. If this were so, then the principal could be held individually liable if he either knew or should have known that he was violating the student's free speech rights.

The federal appeals court affirmed dismissal of the complaint against the school principal on the grounds that the principal was protected by qualified immunity from a suit for damages. The court noted that the major cases involving the free speech rights of students have dealt with students at the high school and junior high school levels, rather than at the elementary school level. Since the applicability of the free speech clause to students at the elementary school level is unclear, the court raised some doubts about whether and to what extend free speech protec-

tions apply to elementary school students. Because of this uncertainty, the court concluded that the principal did not violate a clearly established constitutional right and thus enjoyed immunity from suit in his individual capacity.[3]

State Court Refuses to Address Constitutionality of High School Dress Codes

Male high school students over the age of 18 brought a class action in a Texas state court protesting high school dress codes. The students alleged that the school policy prohibiting the wearing of long hair and earrings by male students violated the rights of adults under both the Texas and U.S. Constitutions. A Texas trial court sustained the student request to enjoin the dress code, holding that the code violated equal protection rights guaranteed by the Texas Constitution.

On appeal, the state court reversed the finding, holding that judicial intervention was not warranted in a dispute over student dress codes. The court cited previous case law for the proposition that not all matters alleging constitutional violations are appropriate for resolution by courts. Emphasizing that judges must be wise enough to perceive that constant judicial intervention in some institutions does more harm than good, the court concluded that judicial intervention in the matter of student dress codes and hair length regulations would not offer any practical resolution.[4]

Restrictions on Clothing Bearing Sports Insignias Struck Down in Federal Court

In another challenge to student dress codes, students in elementary, middle, and high schools challenged a California school district policy that prohibited students from wearing clothing bearing the insignia of any college or professional sports team. The policy was enforced through an initial warning, followed by removal from regularly scheduled classes for the day, and, if the conduct persisted, suspension from school.

The federal district court recognized that the need for maintenance of the educational system requires a balance between students' free speech rights and the state's interest in preserving and protecting the educational process. However, the court found for the students in their challenge to the dress code. The court held that the students' free speech may not be abridged in the absence of facts that might reasonably have led school officials to predict substantial disruption or material interference in the educational process.

In this case, the school district offered as its rationale for its policy the presence of student gangs on campuses. While such a rationale would normally be compelling for the court in enforcing a dress code, the evidence did not support the presence of gangs at the elementary school, and among those gangs at the middle and high school the use of sports insignia was not shown to have any relationship to gang membership. The court concluded that the school district had failed to carry its burden to justify the dress code restriction as applied to the sports insignia.[5]

Student's Comments Fail to Meet Test as Actionable Threats and Are Protected Free Speech

A California high school student brought suit alleging that a three-day suspension for allegedly threatening to shoot her high school counselor violated her free speech rights under the First Amendment.

The student had sought to change her class schedule for the spring semester, but had met with a variety of administrative frustrations that required extended waits and delays in processing her request. At one point in the process, the student was informed by the counselor that an approved change in class schedule could not be entered in the computer because it would result in class overloads. Although conflicting testimony was presented on this point, it was alleged that the student said, "If you don't give me this schedule change, I'm going to shoot you." Following this statement, the student apologized to the counselor and the counselor continued making schedule changes. Although the counselor took no action at the time of the statement, she did obtain a discipline referral form at the end of the school day and submitted it the next morning. The counselor indicated on the referral form that she regarded the tone and manner of the student's statement to be a possible future danger. Following a conference with the student and counselor two days after the incident, the principal suspended the student for three days.

The federal district court ruled that the student's statement was not a "threat" excluded from First Amendment protection, and that the suspension violated the student's right to freedom of speech. In its rationale, the court emphasized that a statement must have a gravity of purpose and a likelihood of execution as well as an intent to harm in order to allow the imposition of discipline. There was no evidence that the student acted in a physically threatening manner, including the fact that the counselor did not immediately react to the statement or seek any assistance. As inappropriate as the student's words might be, they reflected impatience and frustration, not a danger to the counselor. In balancing the student's free speech rights against the school's interest in maintaining appropriate discipline, the overriding interest in free expression prohibited the penalties imposed by the school district.[6]

Federal Appeals Court Strikes Down District's Random Urinalysis Testing Program for Athletes

In a case that has been appealed to the United States Supreme Court, parents of students brought an action against an Oregon school district, challenging the use of random urinalysis testing for participation in interscholastic athletics. The federal district court upheld the school policy, justifying the use of random testing on the basis of an increase in school-related incidents involving student use of drugs and alcohol, rumors of such incidents, and evidence of a student drug culture that included rowdy youth groups with names like "Drug Cartel" and incidents of athletic injuries attributable to drug use.

Under the policy, students in district schools must sign an agreement to be tested during the year in which they participate in interscholastic programs, and all athletes are subject to testing at the beginning of the school year and weekly random testing during the season. If a test is positive, a second test is immediately ordered. No action is taken if the second test is negative, but if it is positive, then the student must either submit to a six-week drug treatment program or be suspended from participation in athletic competition for the remainder of the season and the next year's program.

The federal appeals court reversed the district court, holding that the random drug testing was an unconstitutional administrative search. The court recognized that the policy appeared to efficiently reduce drug problems at the school, that it was randomly conducted through a lottery

system that vested no discretion in administrative officials, and that the school district's interests in preventing injuries to student athletes, reducing drug use by students, and improving classroom discipline were not "minimal." However, the court concluded that the school district's interest in reducing drug use was not so compelling as to justify the degree of intrusion required by random tests of students' urine. The court emphasized that students have a legitimate expectation of privacy in their excretory functions, and that this expectation is not diminished in the case of student athletes, since having an authority figure watch, listen to, and gather results of urination was highly intrusive.[7]

[Editor's note: The United States Supreme Court has heard oral argument on this case, and is expected to render a decision on the merits during the 1994-95 term. If a decision is forthcoming, a complete analysis of the opinion will be provided in the next edition of *School Officials and the Courts*.]

District's Policy on Unreasonable Searches Shields It from Liability

In a civil suit brought by a South Carolina high school student whose car was searched by a police officer on school grounds, the student requested monetary damages under Section 1983 of the Civil Rights Act for unreasonable search violating Fourth Amendment rights.

On the day of the search, a school security guard informed the principal that an anonymous telephone tip had been received that there had been "activity" around the trunk of the student's car while the car was parked on school grounds. The principal called local police officials, expecting that a drug-sniffing dog would be brought to the site. When the police officer arrived without the dog, school officials removed the student from class, questioned him about the tip, and searched the car when the student presented the keys and "volunteered" to be searched. The search was conducted by the police officer, and no drugs were found.

The Supreme Court of South Carolina affirmed a lower court ruling and agreed with a jury verdict in favor of the local school board. Under Section 1983, a school district may not be sued for an injury inflicted by its employee unless the injury was inflicted pursuant to official policy. The court's principal basis for its decision was that even if the search of the student's car was unreasonable, it was not conducted pursuant to the local school district policy, and thus there could be no basis for district liability.

The student's theory was that the search was unreasonable because the anonymous tip was insufficient to create a reasonable suspicion to justify a search. However, since school policy required that searches must be based on reasonable suspicion, the school district was not liable for the school official's failure to follow that policy.[8]

Totality of Circumstances Justifies Search of Students for Drugs

When an Illinois high school teacher overheard two students discussing their drug activities on campus, the teacher reported the information to school officials. A school resource officer was directed to search the students' lockers, and several bags of marijuana were discovered. When the students were confronted, they identified two other students who they claimed also had marijuana. A search of these two students' lockers resulted in the discovery of marijuana in

one locker. When the other student's bookbag was searched, marijuana was discovered.

The students who were identified as being in possession of marijuana sought to overturn their arrests by suppressing the evidence of the locker and bookbag searches. A trial court granted the motion to suppress the evidence, and the state appealed.

A state appeals court reversed the decision of the trial court, and held that the search met the standard of reasonable suspicion, because it was justified at inception and reasonable in scope. The test applied by the court in assessing the reasonableness of the search is called the "totality of the circumstances" test, and emphasizes that reasonable suspicion exists if, considering the totality of the circumstances, a reasonable person would believe that an offense has occurred and that evidence of the offense is in the place to be searched. In this case, school officials were justified in conducting the search because they had the testimony of a student implicating the defendants, information from a teacher that independently confirmed drugs were on the campus, and the marijuana found in the locker of the student who implicated the two defendants.[9]

Reasonable Suspicion Standard Applies to Searches by School Security Officers

A warrantless search by Arizona school security officers, which resulted in the arrest of a student for possession of cocaine, was challenged in court.

The incident occurred at the end of the school day. The security officers had been dispatched by the school principal to go to an intersection two blocks from the school grounds to break up a fight among students. When the officers arrived, students dispersed. Patrolling the area, the security officers saw two students emerging from the bushes, and questioned them. One of the students was asked whether he attended school, and he produced a class schedule from his pocket. As he did so, the school security officers saw part of a plastic baggie in the pocket. The student gave the plastic baggie to the security officers after being directed to do so. The baggie contained cocaine, and the student was turned over to police for prosecution.

The state appeals court ruled that the security officers were agents of the state, and therefore a warrantless search was subject to Fourth Amendment standards of reasonableness. Since the security officers were employed by the school, they were agents of the school principal and were governed by a standard of reasonable suspicion in the conduct of searches.

The court also ruled that the search did meet standards of reasonableness. Although the search took place off school grounds, it was reasonable for school security officers to be involved because the school has a responsibility for the safety of students on the way to and from the school. Officers were justified in stopping the students and making inquiries, since there was evidence that a fight had occurred and the students were at the scene. Observation of the baggie, coupled with the officers' experience and knowledge that a plastic baggie is a typical method for holding drugs, was sufficient to establish reasonable suspicion justifying the search.[10]

Confining Child to Bathroom May Implicate Substantive Due Process Rights

An Oklahoma mentally handicapped student suffering from cerebral palsy brought suit alleging that her due process rights were violated

when she was confined to a school bathroom and forced to clean up excrement on the floor of the bathroom.

The incident occurred at the beginning of a morning special education class, when the teacher told the students to take the opportunity to go to the bathroom. The student had a documented fear of bathrooms, particularly being left alone in one, and this fear was known to the teacher. Furthermore, the child had an IQ of 50, giving her a mental age of about four years and affecting her ability to understand the teacher's actions. The teacher convinced the student to go to the bathroom with other students. When the other students returned, the teacher discovered that the mentally handicapped student had remained in the bathroom, fouling the floor with three piles of excrement. The teacher directed the child to clean the bathroom, and ultimately resorted to knotting a ribbon around the door to prevent the child from leaving until the mess had been cleaned up.

While the federal court agreed that confining the student to the bathroom and forcing her to clean up the mess in the bathroom impinged on the student's liberty, a principal issue in this case was whether these actions rose to the level of a violation of substantive due process under the Fourteenth Amendment. In the context of school discipline, the standard for finding a violation of substantive due process is whether the force applied was so severe, so disproportionate to the need presented, and so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of power literally shocking to the conscience.

The court held that a rational jury could conclude that the teacher's actions were so demeaning and harmful as to violate substantive due process. Because this conclusion was an issue of fact for determination in a jury trial, the court refused to grant a motion for summary judgment.[11]

Suspended Student Does Not Have a Right to Supervision and Protection

An Alabama middle school student, while under suspension and not being supervised, was accidentally wounded by a gunshot while visiting in the home of a friend. In a suit against the principal and assistant principal of the school, the student alleged that the school officials failed to notify the parents of the two-day suspension they imposed on the student. The parents' theory of liability was that school officials acted with such gross disregard for the student's safety as to deny the student his substantive due process rights.

The suspension had been given to the 14-year-old student for leaving school grounds without permission. Both parents worked, and were not at home at the time the suspension occurred. Although the student's grandfather was designated as a person to contact if the need arose, school officials did not contact him, but sent a note home with the student informing the parents of the two-day suspension.

The federal district court ruled that the school officials enjoyed qualified immunity from suit in this case. Qualified immunity stipulates that a person acting under color of state law cannot be found personally liable under Section 1983 for actions that deprive another person of a federally protected right, unless the right is sufficiently clear that a reasonable official would understand that what he is doing violates that right. The court held that no court has yet recognized a right under due process guaranteeing a student

supervision or protection after being suspended and after leaving school grounds, or guaranteeing notice to his parents of the suspension.[12]

Being "Under the Influence" May Include Ingestion of a Single Can of Beer

A Florida high school student's parents brought suit after the student was given a five-day suspension for attending a school function after consuming an alcoholic beverage.

The student had been one of several students who consumed beer before a high school football game. The students had gone to a local Wendy's before the game, and one of the students had urinated in the parking lot of the restaurant. When local police arrested that student at the football game, the school principal asked another member of the group if he had been drinking. The student admitted that he had been drinking, and was instructed to report to the principal's office the following Monday morning. At the Monday meeting, the student admitted to drinking one beer before the game and was suspended for five days under a section of the code of student conduct forbidding students to be "under the influence" of drugs while attending school functions. The student appealed the suspension through the school district hierarchy, but was denied a hearing at each level, including that of the school board.

In a suit brought against the principal and the school district by the parents of the student, the federal district court granted qualified immunity to the principal, but held that a genuine issue of material fact existed as to whether the school board policy required the board to uphold the principal's disciplinary measures regardless of the merits of the appeal. The court emphasized that the student/plaintiff bore the burden to show that the principal violated a clearly established constitutional right when he interpreted a rule prohibiting students from being on school property while "under the influence of alcohol" as prohibiting the presence of a student who had ingested a single alcoholic beverage. No case law supported the student's assertion that being under the influence required ingestion of more than one can of beer; thus, the principal could not be considered to have denied a clearly established right.

What was troubling for the court, however, was the language of the school code that could reasonably be interpreted to create a policy to uphold disciplinary decisions of school principals regardless of the merits of the principal's decision. A genuine issue of material fact existed on this matter, and therefore the court denied the school board's motion for summary judgment on this issue.[13]

Principal's Deliberate Indifference to Teacher's Molestation of Student Creates Liability

A Texas high school student who was sexually molested by her teacher sued the school principal and district superintendent in their supervisory capacity for permitting violations of her substantive due process right to bodily security.

The teacher had made no secret of his "fancy" for young girls in his biology classes, and it was widely known within the school community that he behaved inappropriately toward these students, including showing favoritism toward them and touching them in an overly familiar and inappropriate way. The principal had received numerous reports over the years of the teacher's inappropriate conduct with other female students and with the plaintiff, but

he failed to record these incidents, dismissed the complaints without investigation, and did not report complaints to the district office.

The Fifth Circuit Court of Appeals held that school officials can be liable for a teacher's sexual misconduct toward a student if they knew about the misconduct and demonstrated "deliberate indifference" to the child's plight by failing to take action. A school official's liability would be based on a showing that the school official learned of a pattern of inappropriate sexual behavior by a subordinate which pointed plainly to the conclusion that the subordinate was sexually abusing a student; that the school official demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse; and that such failure caused a constitutional injury to the student. In a concurring opinion, "deliberate indifference" was characterized as a failure to act that rises to the level of a conscious or deliberate choice.

The court ruled that the school principal might be held liable because he knew of a pattern of inappropriate sexual conduct involving the teacher, sought to suppress information, and failed to investigate or intervene to stop the teacher's conduct. The superintendent of the district was granted qualified immunity from suit on the basis that when he learned of the allegations of molestation he instructed the principal to speak to the teacher about reports of misconduct, personally investigated the reports, met with the teacher, reprimanded him, and warned him of the consequences of future misconduct.[14]

Special Relationship Is Created by Level of Custody in a Residential Facility

A 16-year-old student at a residential school for the deaf in Mississippi was sexually assaulted by another male student. When school officials learned of the assault, a report was filed and an investigation ensued. The perpetuator was suspended, but was then allowed to return to school and placed in a separate dormitory from the victim. As a result of budget cutbacks in the summer term, however, only one dorm was open to students in residence. Both students were assigned to the dorm, and a second rape occurred. The student victim filed an action against the school, alleging that school officials failed to protect him, and that his victimization denied his due process rights to liberty and bodily security.

The Fifth Circuit Court of Appeals found a special duty relationship between school officials and the victimized student, based on the residential nature of the educational facility. The residential school had a custodial component in which the student was dependent on the school officials and had lost a substantial measure of his freedom to act. Since the school had 24-hour custody of the student, who lacked the normal communications skills that a hearing child would have, there was an affirmative duty to protect him from injuries resulting from acts of other students.

In this case, however, the court concluded that school officials were not liable because they had taken appropriate steps to report and investigate the initial complaint and to separate the students after the suspension. Since the superintendent did not act with "deliberate indifference" in the case, the court found no liability for a violation of due process under the Fourteenth Amendment.[15]

Lack of Actual Knowledge of Employee's Acts Shields District from Liability for Sexual Assaults

Two middle school students in a Georgia school district were sexually assaulted by a school security guard who was responsible for transporting the students off campus. The sexual assaults involving the students took place in separate incidents and were reported to school officials, who began immediate investigations. Contending that school officials were liable for violating substantive due process rights to bodily security, the students sued the district in federal court.

School officials had been aware that the guard had been arrested for aggravated assault after an argument with his mistress, and they had received complaints from other female students that the guard had made suggestive comments to them. School officials had questioned these students about their complaints, but had taken no further action. When the aggravated assault charge was dropped, officials had discontinued an investigation into that incident.

The federal district court granted the school district's motion for summary judgment and rejected the students' claim that school officials and supervisors could be held liable for the security guard's assault and rape of the students. The court found that neither the board nor the individual supervisors were sufficiently aware of any previous events that would lead them to conclude the security guard was a danger to students. Absent any constructive or actual knowledge that the activities of the guard were known to the board or to supervisory personnel, there could be no liability under the due process clause of the Fourteenth Amendment.[16]

Grade Eligibility Requirement Flunks the Rational Basis Test

A student in a California high school sued the district when she was disqualified from cheerleading on the basis of the district's grade eligibility requirements.

The district policy required a 2.5 grade point average for participation in cheerleading, and emphasized that an "F" in any subject or a semester grade point average of less than 2.5 would make a student ineligible even if the cumulative average remained above the 2.5 minimum requirement. The student flunked chemistry, and her semester grade point average fell below 2.5, although her cumulative average still exceeded 2.5.

The student's suit contended that the district imposed higher academic requirements for cheerleading than for interscholastic sports. Had she been on the football team, the student would have remained eligible with a cumulative grade average of 2.0, and an "F" would have had no consequence for participation.

Although a lower court decision rejected the student's claim, a state appeals court reversed, holding that the district's grade eligibility policy violated equal protection of the law. The court sought an answer to the question, "Why are grade eligibility requirements higher for cheerleaders than for athletes?" No explanation supported a rational basis for the policy. The school board offered the explanation that cheerleaders, as opposed to athletes, represent the school to the public and must be among the better scholars. The school principal testified that cheerleaders should be held to a higher standard because of the great status and importance of the pep squad.

The court refused to apply a test of strict scrutiny to the board's policy, finding no evi-

dence that the policy affected a fundamental right or constituted discrimination on the basis of gender. However, the distinction between cheerleading and interscholastic athletics flunked the rational basis test. The court found that cheerleaders are no more "ambassadors" for schools than are athletes who wear the uniforms of those schools. While academic criteria might vary for academic extracurricular activities, such as debate or school newspaper clubs, the distinction imposed by the board policy could not be justified. The court emphasized that the decision did not mean that schools must lower academic standards, and suggested that the school raise the standards for athletes.[17]

Peer Sexual Harassment Does Not Implicate a Title IX Claim of Intentional Discrimination

A junior high school student in California sued school officials, alleging that they failed to put an end to sexual harassment inflicted on her by her peers.

The student had been subject to repeated instances of harassing attacks by other students throughout the seventh and eighth grades. Specifically, students repeatedly suggested that the student "had a hot dog in her pants," and continued to escalate this form of harassment as they learned that the student was reporting these and other instances to her counselor. The counselor took no action, defending his inaction on the basis that "boys will be boys" and attempting to placate parental complaints without telling them of the Title IX grievance process available at the school.

When instances of threats and the physical striking of the student occurred in the second year of harassment, school officials began to discipline other students for their conduct. Students wrote comments like "Jane is a hot dog bitch" on the walls of restrooms nearly every day, and the student stopped going to the restroom during the day. Although the student was transferred to another school at the end of the second year, the harassment continued. Ultimately, she left public school and began attending a private school.

The federal district court found that Title IX requires a showing of intentional discrimination on the basis of sex by an employee or agent of the educational institution, and ruled that a showing of acts of harassment by students was insufficient to prove intentional discrimination on the part of school employees. Under the court's reasoning, no damages could be obtained under Title IX for a school district's failure to take appropriate action in response to complaints of student-to-student sexual harassment. However, the court left open the question of whether the school's failure to act in the face of complaints of student-to-student sexual harassment might reflect an actual intent to discriminate against the student on the basis of sex.[18]

Teacher's Continued Employment in District May Constitute Sexual Harassment

Two California public school students alleged that a teacher, who had a romantic relationship with their mother, had molested them off campus. After the incidents of molestation alleged by the students, their academic performance and attendance records declined. The students contended that the presence of the teacher created a hostile environment, depriving them of the full enjoyment of public education within the district.

While the claims of molestation were investigated by the district in the context of an administrative review, they were not resolved. However, the district disciplined the teacher for admitted drug use, and later reassigned him to another school. Although the teacher no longer taught in the school the students attended, he remained in the district's employ.

The federal district court ruled that the students had asserted the elements of a claim of hostile environment sexual harassment which would withstand a motion for summary judgment in favor of the school district. The court determined that genuine issues of material fact existed as to whether the students were subject to hostile environment sexual harassment as a result of the teacher's continued presence in the school system.

Hostile environment sexual harassment typically involves harassment so severe or pervasive as to create an abusive environment. If the existance of such an environment were effectively established during a trial on the merits of the complaint, then the school district could be liable for the harassment if it were shown that school officials failed to take action to prevent it. The court ruled that the parties must proceed to trial on the disputed issues of fact in order to determine liability.[19]

Special Education

The range and complexity of legal issues that have grown out of the provisions for special education in public schools compelled the development of a new chapter in *School Officials and the Courts* beginning with the 1993 edition. In this area, provisions of the Individuals with Disabilities Education Act (IDEA) are addressed as these provisions are interpreted by state and federal courts. Issues related to the provision of appropriate public education, inclusion, disciplining the handicapped, unilateral placement, and compensatory education are among those found in the cases that follow.

Absent Provision in IEP, There Is No Right to Participation in Interscholastic Sports

A Montana high school student brought an action against the high school athletic association, alleging that an eight-semester and four-season eligibility rule violated the student's right to participate in interscholastic sports under the IDEA. The student was an 18 year old who claimed learning disabilities and who ran afoul of the athletic association's eligibility requirements for maximum participation during his senior year. The rules were intended to promote safety and ensure opportunities for competition by limiting the number of years of eligibility for student athletes.

The Supreme Court of Montana held that the student failed to establish any federally protected right to participate in interscholastic sports, since the student was not participating in any formalized Individualized Education Plan (IEP) that emphasized participation in sports programs at the school. A special education student has an entitlement to a free, appropriate public education under the IDEA, but the nature of the entitlement is specified in the IEP designed for each student. The special education student is to receive special education related benefits only pursuant to that IEP. The court reasoned that when participation in interscholastic sports is included as a component of an IEP as a related service, then the "privilege" of participating in these activities is transformed into a federally protected right.

However, in this case, the student's parents had not sought to involve the child in special education services at the school, and no formal IEP had ever been developed. Although the student received specialized educational services, he was not participating in a formal, written IEP. Absence of a formal IEP led the court to conclude that the student had no federally protected right to continued participation in interscholastic programs.[1]

Preference for Mainstream Placement Is Influenced by Four Factors

Parents of a moderately mentally retarded nine-year-old girl with an IQ of 44 appealed a decision of the school district to place the child half time in a regular classroom for non-academic subjects such as art and music and half time in a special education class for academic work. The parents sought full-time placement in the regular classroom for their child. A hearing officer

supported their claim on the basis that federally mandated inclusion requirements would be accommodated by such an order.

The Ninth Circuit Court of Appeals agreed with the hearing officer's decision regarding inclusion, and ruled that the appropriate placement for the child was in a regular second-grade classroom, with some supplemental support services, on a full-time basis. Affirming a district court ruling, the court emphasized that in addressing the appropriateness of a mainstream placement, courts must consider the educational benefits of full-time placement in the regular class, the non-academic benefits of such placement, the effect the student would have on the teacher and other students in the regular class, and the costs of mainstreaming. The district court had found, consistent with the hearing officer's decision, that the child would benefit both academically and socially from the placement. Transcripts of testimony by the child's regular classroom teacher convinced the appeals court that she was not disruptive, obeyed instructions, and did not interfere with the teacher's ability to instruct other students. Finally, the district failed to introduce evidence that would convince the court that appropriate services in the regular classroom would be significantly more expensive than in a special education setting.[2]

Mainstreaming Must Be Considered in Determining Appropriate Placement

Parents of a moderately mentally disabled student challenged a New York school district's placement decision, which mainstreamed the student only for art, music, and gym. The parents and school district officials had been at odds with regard to the appropriateness of the placement for four years, but had been unable to reach a settlement despite court intervention.

On cross motions for summary judgment, the federal district court considered the entire record and adopted the following ruling. The court held that the school district failed to establish the appropriateness of the placement in light of the requirement for mainstreaming. The court applied a two-part test to determine the appropriateness of the placement. The first question is whether education in the regular classroom with supplemental aids and services can be achieved satisfactorily for the child. If not, and the school intends to provide special education in a restricted setting or remove the child from special education, then the second question is whether the school has mainstreamed the child to the maximum extent possible.

The court found that the district had not taken meaningful steps to include the student in the regular classroom with adequate supplemental aids and services, and that the district had not considered less restrictive alternative placements in designing the student's IEP.[3]

Preference for Mainstreaming Defeats Parents' Demand for Full-Time Residential Program

Parents of a Maine special education student challenged an IEP designed by the district, which sought to modify earlier mainstreaming strategies in light of new evaluations of the child's severe, non-verbal learning disabilities. The new IEP was designed in response to new diagnostic information provided when the parents undertook additional evaluations of the child's disability after the eighth grade. Although several innovations were made by the school district in light of the new information, the parents were

dissatisfied with the placement, and they unilaterally enrolled the child in a full-time residential program.

The federal appeals court ruled in favor of the school district's placement, giving consideration to the principle that the preference for mainstreaming in the IDEA emphasizes that when the child would make reasonable educational progress in a day program, he or she is not entitled to a residential placement even if the latter would more nearly enable the child to reach his full potential. In this case, establishing the adequacy of the district's IEP was a highly fact-intensive process, with a number of expert witnesses called to testify. While opinions varied, the plan developed by the district offered a wide range of in-school and after-school support services and was considered to allow the child to remain in his home community and interact daily with non-disabled peers. While such a program may not have been ideal, it met the standard for a free, appropriate education under the law.[4]

Independent Evaluations Must Be "Considered" by Placement Team

The parent of a Connecticut student with a language-based learning disability challenged the school district planning and placement team's decision to discontinue the child's placement at a private facility and authorize attendance at a public high school. The parent alleged that the placement decision did not conform to the requirements of the law, and that the placement meeting was "orchestrated and censored" by the placement team in order to reach a preconceived result.

Federal law requires that an independent educational evaluation be considered by the placement team in formulating a student's IEP. Only two of the members of the placement team read the complete evaluation that was conducted for this child, which was financed by the district and recommended that the child remain at the private facility. However, all members of the team were provided with a summary of the evaluation.

In affirming a lower court holding, the federal appeals court held that the placement team adequately considered the independent educational evaluation before formulating the student's IEP. The court noted that the following steps had been taken to ensure fairness: the public school's director of special education, who was a member of the placement team, reviewed the independent evaluation; the school's systemwide psychologist read the social-emotional findings of the evaluation to the placement team and summarized the evaluation report for the group; and the parent of the student attended the placement meeting and discussed reasons she believed that the student should remain in the private facility. Thus, although the report was not distributed to all members of the committee, it was sufficiently "considered" within the meaning of the law.[5]

Parent Is Entitled to Reimbursement for Unilateral Placement

The parents of a Maryland student in need of special education services were able to establish that the district violated the IDEA in connection with the child's first year in school.

The mother of the child had informed school officials four months before the start of the school year of the child's need for a special educational program. School officials initially advised the parent that no testing could take place during the summer months, and then postponed placement team meetings on two occasions on the

excuse that additional testing was needed. The hearing officer and the federal district court later determined that additional testing was superfluous and unnecessary. When an IEP was presented to the parent in early November of the school year, it contained nothing more than a collection of forms prepared for other students stating only general goals and not at all responsive to the child's specific needs.

In response to this inaction by school officials, the parents initially arranged tutoring for the child and later undertook a private, unilateral placement based on an independent determination that the child had a form of dyslexia.

The federal district court held that the parents were entitled to reimbursement for the costs of a tutor and private school placement. In the court's view, the school district deprived the child of a free, appropriate public education because: 1) the school system violated the procedural requirements to such an extent that the violations detrimentally impacted upon the child's right to education, and 2) the IEP that was finally developed was not reasonably calculated to enable the child to receive educational benefits.

Federal law requires that a meeting to develop an IEP must be held within 30 days of the determination that a child needs special education. The court found that, because of administrative confusion and budgetary constraints, the school district failed to respond to the mother's inquiries, informed the mother that her child could not be tested until months after the school year began, and failed to develop an IEP within required time limits of the IDEA. Once the IEP was developed, it was not tailored to the child's individual needs. Therefore, the parents' unilateral placement decision was justified.[6]

Reimbursement for Unilateral Placement Denied in Favor of Mainstreaming

A bright, 17-year-old Texan with various disorders of affect, behavior, learning, and speech received a placement in the least restrictive environment as part of a public school placement decision. The student was provided with one-on-one instruction in a self-contained classroom and a reduced school day in order to help him make progress and deal effectively with the frustration he experienced due to his disabilities. The parents initially agreed to the placement, and the student appeared to benefit from the program. However, after the student had a brush with the juvenile justice system, the parents challenged the placement decision and demanded more supervision for the student, ultimately seeking a residential treatment facility over the student's objection. When school officials refused to agree to this placement, the parents sought federal court reimbursement for the costs of the unilateral placement decision.

The federal appeals court held that the evidence supported the school district's IEP, and denied reimbursement to the parents for the costs of placing the student in a residential facility. Giving particular attention to the desirability of mainstreaming, the court found that the student advanced in terms of grade level, became steadily more able to focus on particular tasks without experiencing debilitating frustration, interacted with nondisabled peers, and had the opportunity to participate in community affairs. Since the provision of special education need not be ideal to be appropriate, the court found that the public school placement was appropriate and provided an educational benefit to the student in an environment that was less restrictive than that proposed by the parent.[7]

Federal Courts May Order Reimbursement to Parents for Unilateral Placements in Unapproved Private Schools

The parents of a student with a learning disability rejected the placement proposed by the school district, and unilaterally placed the child in a private school. A federal district court ruled for the parents, holding that the IEP proposed by the district violated the IDEA, and ruling that the educational program at the private school was appropriate and in substantial compliance with the requirements of the IDEA even though the private school did not comply with all aspects of the law. The court of appeals affirmed this decision, and rejected the state's contention that reimbursement was not appropriate because the parents chose a private school that was neither approved by the state nor in compliance with all requirements of the IDEA.

In a decision of the United States Supreme Court, Justice O'Connor affirmed the rulings of the lower federal courts, holding that a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under the IDEA and place the child in a private school that is otherwise proper under the IDEA but does not meet all of the law's requirements. The Court reasoned that reimbursement for unilateral placements by parents has already been recognized as within the authority of federal courts as a remedy for a school district's failure to provide a free, appropriate public education to a child with special education needs.

Requirements under IDEA section 1401(a)(18) would not be applicable to the parents' placement, because those requirements stipulate that education be provided "under public supervision and direction," that the IEP be designed by "a representative of the local education agency," and that the school meet the standards of a state education agency. To read these requirements as applying to parental placements would defeat the IDEA's goal of ensuring a free, appropriate education and deny parents the right of unilateral withdrawal. The majority took the view that it would be unreasonable and inconsistent with the IDEA to forbid parents to educate their children at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place.

On the matter of reimbursement to parents, the Court rejected the district's contention that allowing reimbursement places an unreasonable financial burden on school districts, but did note that total reimbursement will not be appropriate if a court fashioning discretionary equitable relief under the IDEA determined that the cost of the private placement is unreasonable. The Court emphasized that reimbursement claims need not worry school officials who conform to the IDEA's mandate to either give the child a free, appropriate public education in a public setting, or to place the child in an appropriate private setting of the district's choice.[8]

Reimbursement for Unilateral Placement Can Be Denied When School District's IEP Meets Test for Appropriate Education

A local Arizona school district evaluated a profoundly hearing-impaired child, determined that a program excluding sign language would not work well for her, and designed a program calling for oral methods with augmentation that

included sign language, lip reading, and oral training. The parents enrolled the child in a private school that forbade sign language, where she received training specifically designed to teach her to lip read and to speak. The parents wanted the child to learn to speak, believing that if she learned sign language she would become dependent on it and never learn to talk. After undertaking the unilateral placement at the private school, the parents sought reimbursement for the cost of speech therapy services.

A federal appeals court rejected the parents' claim for reimbursement for the speech therapy services that the child received at the private school. The court emphasized that parents who seek reimbursement for unilateral placement are entitled to reimbursement only if the public placement violated the IDEA and the private school placement was proper under the law. In this case, the parents failed to establish that the IEP proposed by the district did not provide the child with the elements of a free, appropriate public education. Therefore, the court denied reimbursement for unilateral placement.[9]

Courts May Impose Compensatory Education Requirements for Past Deprivations of Special Education Services

Parents of a 27-year-old man who suffered from profound hearing loss and speech deficiencies claimed that the local school district had failed to provide an appropriate IEP for their son for substantial periods of time during the period in which he was age-eligible for IDEA services. The local school district moved to dismiss the claim on the grounds that the former student was no longer eligible for special education services. The parents appealed to the First Circuit Court of Appeals, contending that a finding that the school district failed to meet the requirements of the IDEA would entitle the son to additional compensatory benefits by court order.

The federal appeals court ruled that the IDEA grants courts the power to require compensatory education as a remedy for past deprivations that occurred during the time period in which a student was eligible for special education services. Even when the student is beyond the statutory age for services, imposing liability for compensatory educational services requires the school district to belatedly pay expenses that should have been paid when the individual was age-eligible.

Although the law limits eligibility to disabled children between the ages of 3 and 21, denying compensatory education beyond that period would thwart the intent of the IDEA because school districts could simply stop providing services to older teenagers and rely on the time-consuming review process to protect them from further obligations. If it could be proved that the school district denied the former student his right to a free, appropriate public education during the eligibility period, then he could claim relief in the form of compensatory education, notwithstanding the fact he was now 27 years old.[10]

In a later case, the First Circuit ruled that a school district's long-standing procedural lapse in failing to initiate administrative review as required under the IDEA would result in a procedural default that would permit the parent or student to claim an entitlement for compensatory education beyond the age of eligibility. In this case, the parents objected to an IEP and ultimately withdrew the child from public school for a period of two years, during which time the local school district failed to initiate any procedural review of the unilateral placement decision.[11]

Serious and Irreparable Harm to Child Constitutes an Exception to Requirement to Exhaust Administrative Processes

A severely retarded eight-year-old boy with cerebral palsy was placed as a day student in a special education program within the local New Jersey school district. The parents objected to this placement, and unilaterally placed the child in a residential facility in Kansas. The local school board refused to pay for this placement, but did agree to place the child in the residential facility during the summer months pending the outcome of an administrative appeal of placement. The parents became impatient with the administrative review, and sought to compel the district to opt for the residential treatment facility by invoking an emergency exception to the requirement for exhaustion of administrative remedies.

Federal courts have permitted exceptions to the requirement for exhaustion of administrative remedies only in limited circumstances. Exceptions that have traditionally been recognized include circumstances in which the administrative process would be futile or inadequate, where the administrative agency is not empowered to grant the relief requested, or where exhaustion requirements would do severe or irreparable harm to the individual.

The federal court of appeals ruled that the parents must provide sufficient preliminary evidence that the child would suffer serious and irreversible mental or physical damage, such as irremediable intellectual regression, before the administrative process could be circumvented under the emergency exception. The possibility of regression if the child were moved from a residential placement may not be enough to justify an exception. However, a showing that the regression would be irreversible would demonstrate irreparable harm; this would relieve the parent of the obligation to finish the administrative process before bringing suit. A remand was necessary to allow the parents to show that the student would be physically, permanently, and irreparably educationally harmed without socialization and specialized care at the residential facility.[12]

Failure to Properly Place a Special Education Student Does Not Establish "Educational Malpractice"

Parents of a 14-year-old learning disabled student in the District of Columbia Public Schools sued the school district, claiming that school officials were negligent in failing to properly evaluate the student's disabilities and to provide timely and appropriate placement. The parents' complaint also alleged that school officials lost the student's records and post-dated a document in order to cover up their failure to comply with prompt referral for evaluation. Characterizing these claims as based on an allegation of "educational malpractice," the trial court dismissed the complaint for failure to state a claim on which relief could be granted.

The appeals court affirmed the trial court's judgment dismissing the complaint. Although the court recognized that the complaint stated facts which, if proved true, would implicate noncompliance with provisions of the IDEA, the court agreed that the essence of the complaint was that school officials had engaged in "educational malpractice." The court cited a substantial number of appellate decisions for the proposition that a public school official's failure to educate students, or to assign them to the correct school or program, does not give rise to a suit for monetary damages. While the student relied heavily on

the apparent failure of the school employees to comply with their own regulations, those regulations were not intended to create a right to sue for noncompliance. Furthermore, the availability of an administrative remedy for the violations supported the conclusion that there was no right to enforce the regulations through a civil action for damages.[13]

Gifted Students Have No Constitutional Right to Special Education Services

Parents of a Connecticut student who was identified as gifted in kindergarten demanded that the school board provide the child with a program of special education designed to meet his individual needs. The parents contended that the state constitution provided a right to receive a public education, and state statutes identified exceptional children as those who needed a program of special education because they deviated intellectually, physically, socially, or emotionally so markedly from normally expected patterns that they would be unable to progress effectively in a regular school setting.

The Supreme Court of Connecticut found that the legislature's failure to mandate programs of special education for gifted children did not violate the gifted child's rights under equal protection provisions, because the needs and abilities of gifted children and children with disabilities were sufficiently different that the state legislature could reasonably have determined to treat them differently. While equal protection requires that there be uniform treatment of persons standing in the same relationship to state action, the state has broad legislative powers to develop statutory classifications that neither proceed along suspect lines nor infringe upon fundamental constitutional rights.[14]

Religion

The First Amendment to the United States Constitution forbids the establishment of religion by the state and guarantees religious liberty. Cases involving the establishment of religion have applied a three-part test to determine whether there is a violation of the Constitution: Is the primary purpose of the state's policy secular? Does the policy or practice have a principal effect that neither advances nor inhibits religion? Does the policy foster excessive entanglement between the state and the religious organization?

A new test, sometimes referred to as a "coercion" test, has recently emerged in federal judicial opinions. The U.S. Supreme Court articulated this test in 1992 in *Lee v. Weisman.*[1] The Court found that an invocation delivered at a high school graduation by a member of the clergy at the invitation of the school district was unconstitutional. The Court stated that, since attendance at high school graduation ceremonies is virtually obligatory for most students, a prayer at the ceremony was a state-sanctioned religious activity that involved a "coercive pressure" to participate.

Both tests appear linked to the principle that government should remain neutral in its relationship to religion, neither advancing nor inhibiting a religion. In cases involving religion in the curriculum of public schools, the courts continue to emphasize elements of both the old and the new tests.

Religious Neutrality Is Violated When State Creates a Special School District for Members of a Religious Community

A New York village known as Kiryas Joel is an enclave for a religious group practicing a strict form of Judaism. The village was incorporated to exclude all but those who practiced the tenets of the religious group. New York statute law created a special public school district for this village which followed the village lines. This public school district provided only special education services at the time of the litigation, because children of the village attended private, religious schools that did not offer special education services. Taxpayers challenged the state statute as a violation of the establishment clause of the First Amendment.

The United States Supreme Court, in a decision written by Justice Souter, held that the New York law creating a special school district for a town with boundaries drawn to include only practitioners of a strict form of Judaism violated the establishment clause of the First Amendment. The court majority concluded that the state's action violated the principle of religious neutrality.

In interpreting the establishment clause, the Court emphasized that government power should not be used to prefer one religion over another, and noted that the legislature had used a religious criterion in adopting the statute. This was clear from the fact that the legislature was aware the village was composed of one religious group at the time of enacting the statute, and the statute was special legislation that ran counter to general

laws creating school districts and the customary practices of the state. Justice Kennedy, agreeing that the district violated the establishment clause, emphasized that the state's action was prohibited because the legislation drew political boundaries on the basis of religion.[2]

Voluntary, Student-Initiated Prayers at Graduation Ceremonies Are Permissible

A Florida school board solicited an opinion from legal counsel on prayers at graduation ceremonies, and relied upon the memorandum of counsel in authorizing school principals to permit graduating seniors to direct their own opening or closing remarks at graduation ceremonies. Consistent with this policy, the opening and closing remarks given by student representatives at several high school graduation ceremonies included student-initiated prayers. Parents and students challenged the practice, arguing that prayer at public school graduation ceremonies is per se unconstitutional, regardless of the manner in which the decision to have the prayer is made and how or by whom the prayer is presented.

The federal district court upheld the constitutionality of the legal memorandum that created a tacit school district policy, and granted summary judgment for the school district. No violation of the establishment clause was created by the district's practice, since the practice neither coerced students to participate in religious ceremonies nor created an advancement of religion. The court viewed the policy guidelines as having a secular purpose, that of safeguarding the free speech rights of students by permitting them to select a representative to speak on their behalf and to solemnize the occasion by having a brief message delivered which they had authorized.

Furthermore, the policy was neutral on the subject of prayer, authorizing students to voluntarily opt for a "message" at graduation ceremonies. No governmental endorsement of religion could be established because the ceremony had become a public forum in which the views of students could not be attributed to the state. Since school officials merely permitted the forum, and neither reviewed nor authorized the contents of the student-initiated presentations, the coercive effect on students was insufficient to constitute a violation of the establishment clause.[3]

Board Policy Encouraging Student-Led Prayers at Graduation Ceremonies Places Students in Coercive Setting

A Virginia school board adopted a resolution that encouraged student-sponsored invocations and benedictions at high school graduations within the school district. The board authorized a ballot that was sent to each high school for consideration by members of the senior class. The ballot asked whether students wished to have a nonsectarian, non-proselytizing invocation/benediction/prayer or inspirational message presented at graduation. Class meetings to vote on this motion were mandatory and were called by school principals. All high schools in the district adopted a prayer to be delivered by a student at the graduation ceremonies. Each of the prayers offered as part of the graduation ceremonies in district high schools advanced a religion of those who believe in a Christian deity. Parents and students challenged the board resolution and the prayers at graduation ceremonies as violations of the establishment clause.

The federal district court ruled that the school board resolution violated the establishment clause of the First Amendment. The court

offered alternative theories by which to justify the constitutional violation. Under one theory, the court took the position that a person's constitutional rights are not subject to a majority vote, and ruled that a prayer at graduation ceremonies places students in a coercive setting, since the objecting students' options are 1) not to attend, 2) to attend and be disruptive, or 3) to attend and participate in the ceremony regardless of their objections to the religious nature of the ceremony. Alternately, the court concluded that the school board's resolution amounted to an exhortation inducing students to adopt a prayer at the graduation ceremonies, and thus constituted excessive entanglement between state and religion in violation of the establishment clause.[4]

Whole Language Curriculum Does Not Promote Witchcraft in Violation of the Establishment Clause

Parents alleged that a California school district violated their child's rights to free exercise of religion by using portions of a teaching aid that they believed promoted witchcraft.

The school district was using a whole language approach to reading instruction in the elementary grades that included a teaching aid known as *Impressions*. The parents objected to a portion of the instructional materials that involved readings relating to witches and sorcerers and included activities such as having children develop rhymes and chants, act out selections, and discuss the selections' characters and themes.

After initial complaints, the school district established an advisory committee to determine whether the content of the materials or the activities contained an emphasis on witchcraft or the occult. This committee reported that it did not have evidence or expertise to establish a connection between the materials or activities and any occult practices. When the school district adopted this report, the parents sued for an injunction to prevent use of the materials.

The Ninth Circuit Court of Appeals affirmed a lower court ruling that the public school curriculum did not violate either the parents' or the child's constitutional rights. The court noted that the parents had conceded that the authors of the series and school district employees had a secular purpose for developing and utilizing the materials. As a consequence, the materials could not be said to violate that portion of the *Lemon* test that has to do with the intended purpose of the materials.

The parents argued that the effect of using the materials was to convey a message of endorsement or disapproval of religion that should be viewed from the perspective of an impressionable child. The federal court held that the proper test is whether a reasonable observer would view the materials and activities as endorsing religion when giving consideration to the age and maturity of the students involved in those activities.

The court felt that materials and activities that involved no more than reading about, discussing, or contemplating witches would not be prohibited religious activity. However, the court was concerned about whether student participation in activities such as role-playing witches and casting spells posed a greater risk of violating the establishment clause.

The court concluded that the activities did not violate the establishment clause simply because there was a coincidental resemblance between the figures and myths of folklore to the practitioners and practices of witchcraft. The fact that the challenged selections constituted only a minute part of the curriculum further ensured that an objective observer in the position of an ele-

mentary school student would not view them as religious rituals endorsing witchcraft.[5]

In a similar ruling in the Seventh Circuit Court of Appeals, parents challenged an Illinois elementary school's use of *Impressions* as part of a supplemental reading program, basing their opposition to the program on the claim that the program violated the establishment and free exercise clauses of the First Amendment. The federal appeals court ruled that heightened concern for the subtle coercive pressure on students that might relate to a violation of the establishment clause must be balanced against the broad discretion of school boards to select the public school curriculum. In particular, the court noted that federal courts have not been inclined to find a violation of the First Amendment with respect to the selection and use of books and other curricular materials in the public school curriculum.

While parents in this case might be offended by the content of the materials and the exercises associated with those materials, the court did not find that the use of the series established a religion. Even if the challenged materials involved fantasy and make-believe to a significant degree, the court was unwilling to find that the curriculum constituted an impermissible establishment of pagan religion. The court held that neither the purpose of the materials nor the effect on students who read the materials and participated in the exercises supported a violation of the establishment clause.[6]

Depictions and Costumes at Halloween Celebrations Enrich Cultural Awareness

Parents of children in a Florida school district challenged the inclusion of symbols and costumes in Halloween celebrations staged at district schools. Parents sought to enjoin the school practices of teachers dressing up as witches and decorating classrooms in symbols of the holiday. Affidavits submitted to the court included those of a cultural anthropology professor to the effect that "Wicca," a variety of witchcraft, is a religion that considers Halloween a religious holiday. After a decision granting the school district's motion for summary judgment, the parents appealed.

The state appeals court ruled that the mere depiction of witches, cauldrons, brooms, and related costumes in the context of a school's Halloween celebration did not have the primary effect of endorsing or promoting religion and did not violate the establishment clause. It was recognized that the symbols and costumes to which the parents objected were only a part of the costumes and symbols used at school sites. Teachers also dressed as clowns and political figures, and the decorations also included pumpkins and other symbols of Halloween. Furthermore, no religious ceremony of any kind was alleged to have taken place in conjunction with the programs at local schools. The court reasoned that even if the such symbols could have religious significance to followers of particular religions related to witchcraft, the decorations and costumes served the secular purpose of enriching the children's educational background, cultural awareness, and sense of community.[7]

Recognition of Religious Holidays in Public Schools Does Not Violate Establishment Clause

Parents of students in a New Jersey school district challenged the district policy requiring classrooms to maintain calendars depicting national, ethnic, and religious holidays and permit-

ting seasonal displays containing religious symbols.

The school district had adopted a policy emphasizing that it is the responsibility of schools to foster mutual understanding and respect for the rights of all individuals regarding their beliefs, values, and customs. The policy emphasized sensitivity to the many religious beliefs represented in the student population, and stated that teaching about religion and its role in the social and political context of world events did not violate the religious neutrality of public schools. Three types of displays that might include religious symbols were permissible under the policy: 1) religious symbols that are part of a planned program of instruction; 2) calendars that depict religious holidays and are maintained in classrooms and in a central school location; and 3) displays dealing with cultural, ethnic, and religious customs and traditions of others during the appropriate season. Parents did not challenge the first part of the policy, but did object to the second and third parts.

In seeking to find the appropriate dividing line between school-sponsored activities that promote students' understanding and appreciation for national culture and religious diversity and the impermissible endorsement of religion by the state, the federal district court first considered whether the policy or practice had a secular purpose. The court concluded that both the calendar rule and the policy on seasonal displays properly emphasized the secular purpose of fostering mutual understanding and respect for individual beliefs, values, and customs. In considering whether the policy and practices advanced religion or constituted governmental endorsement of religion, the court noted that the emphasis on religious diversity would not justify the conclusion that the school favored one religion over another and reasoned that an absence of religious symbols in seasonal displays might easily be interpreted as governmental hostility toward religion. Finally, the court rejected the notion that since the schools would have to engage in regular supervision of classrooms and seasonal displays to ensure conformity with the policy, excessive entanglement with religion could result. The court ruled that the school district's policy did not violate the establishment clause, and rejected the parents' challenge.[8]

Students and Parents May Utilize School Facilities on the Same Basis as Other Community Groups

Graduating seniors and their parents in a Wyoming school district sought to rent the high school gymnasium for a privately sponsored baccalaureate ceremony, which would include prayers. The district board decided not to rent the facility to the students, acting on a legal memorandum from the state attorney general that contained an opinion that prayers could not be offered at graduation ceremonies and school districts could not rent facilities to a private group in order to avoid the restriction on prayers at these ceremonies.

At the time the use was denied, the board's policy was to rent facilities to all community groups on an equal-access basis. The local community had been encouraged to use school facilities for many different purposes.

The federal district court ruled that the school board violated the First Amendment by changing its existing policy on open access to school facilities when it refused to rent the gym to the group of graduating seniors. While the board argued that it had a legitimate interest in avoiding a violation of the establishment clause,

the court found that the policy singled out the parent/student group in a discriminatory manner that significantly impacted the First Amendment rights of free speech and association. While the board could have adopted a policy denying use of the facilities to all community groups, its decision to permit open access, but to refuse access to a group that proposed a religiously oriented graduation ceremony, violated constitutional rights.[9]

School Policy Allowing Boy Scouts to Use Facilities and Distribute Materials Is Permissible

The parent of a fifth-grade student in an Illinois elementary school challenged the school policy of allowing a local chapter of the Boy Scouts of America to distribute literature on the campus and use school facilities. The parent alleged that the school board violated the establishment clause by endorsing the religious message of the Boy Scouts.

The district policy on facilities use established three categories of use by community organizations. School activity groups received first priority for facilities during noninstructional times, followed by youth recreation and "school-connected" activities, which paid no rental fees, and "other community activities," which paid a minimal rental fee. Distribution of non-school materials was controlled by a policy that stipulated the organization must be nonprofit, must be based in the local community or providing a service that is not available in the local community, and must provide youth-oriented activities.

The Seventh Circuit Court of Appeals applied an establishment clause analysis to the parent's claim. Addressing the issue of advancing religion, the court noted that even-handed treatment of religious and nonreligious groups under the policy supports the view that the school remains neutral with regard to religious issues. The establishment clause does not mandate that schools exclude religious groups from using school facilities. As to the distribution of materials at school, the court found that several factors mitigated any religious establishment. Flyers were distributed only at one time during the school week, no information in the flyers was discussed in class, and the activities of the groups were not part of the curriculum. Furthermore, any qualifying organization could display posters on the school's community bulletin board. The court held that access and distribution was sufficiently divorced from the school to avoid the appearance of state endorsement of religion.[10]

Higher Facilities Rental for Church-Affiliated Groups Violates Establishment Clause

A Virginia church group sued a local school district after the district charged the group a higher rent than other nonprofit organizations for off-hours use of school facilities.

The practice of charging an escalating rent was applicable to all religiously affiliated groups that used school facilities on a long-term basis (more than five years). School facilities were generally available to all community and cultural organizations within the county for use after school hours, but the policy singled out religious groups for a progressively escalating rental rate to encourage them to rent elsewhere, out of a concern that any long-term religious use of school property might constitute an establishment of religion and thus violate the First Amendment.

A federal district court ruled that the practice of charging a higher rent to religious groups

violated the First Amendment, although the court refused to permit the church group to recover the rents already paid. The Fourth Circuit Court of Appeals affirmed the part of the lower court ruling finding a violation of the First Amendment, but reversed and remanded the case, ruling that whether or not the local school board acted in good faith in charging the higher rent, the board would be required to return the illegally collected rent. The discriminatory treatment of church groups was regarded by both courts as a violation of the standard of equal access to a public forum created by the district. The appeals court went on to conclude that if the school board was wrong, even innocently, in charging an escalating rent, it should not be permitted to retain the rent illegally collected.[11]

Failure to Recognize Student Bible Club Violates Equal Access Act

A New Jersey high school student who belonged to a Bible Club sued the local school board, alleging that the board's failure to recognize the club violated the Equal Access Act. The Act requires that if public secondary schools receive federal financial assistance and maintain a "limited open forum" for other noncurricular student groups, then the schools must not discriminate against or deny access to student groups on the basis of religion or other content-based restrictions on speech.

The school board had sought to establish a "closed forum" policy, denying recognition to any student group that was not curriculum-related, and thus reserving the power to deny recognition to student groups.

The Third Circuit Court of Appeals affirmed a lower federal court ruling, determining that the board had created a limited open forum by allowing at least one non-curriculum-related student group to meet on school premises during noninstructional time. The Key Club, a secondary school student service club that engaged in community-related service and fund-raising activities, was regarded by the court as "non-curriculum-related"; by certifying that group, school officials had created a forum for other non-curriculum-related clubs. Although the Key Club had some relationship to the school curriculum since its activities were tied to a history course involving homelessness and poverty, the court found that the nexus between the course and the club was not sufficient. The court ruled that to meet the test of "curriculum relatedness" the club's primary focus must have a direct relationship to significant topics taught in the course. In denying recognition to the Bible Club, the school district had violated the provisions of the Equal Access Act.[12]

High School Gospel Choir Must Comply with School-Imposed Provisions of the Equal Access Act

A Pennsylvania high school recognized a student-initiated club known as the "Gospel Choir" in the 1987 school year and appointed a school secretary to serve as sponsor and director. Composed largely of students at the high school, with the addition of a few former students and a pianist, the choir sang religious songs and performed at high school events and community programs, including a number of church programs. The choir paid a modest fee for use of school facilities for its concerts, and received contributions from a number of donors affiliated with churches at which the group gave concerts. For the most part, this money was used to support scholarships for members of the choir

and was managed by a parent group rather than the school district.

By 1990, school officials became sufficiently concerned that the choir might be violating provisions of the Equal Access Act to insist upon more oversight of the choir's activities and a modification of the choir's repertoire of religious music and inspirational concert messages. Choir members, parents, and the school staff affiliated with the choir objected to this oversight and sued the district.

Noting that the issues of school supervision and oversight presented in the case required a balancing of individual rights to free speech and association against the establishment clause, the federal district court ruled that the religious nature of the student group's activities would place limits on the extent to which school employees could be involved with the organization. The Equal Access Act was enacted to protect the rights of students to free speech and assembly in settings in which school officials have permitted limited open forums for student organizations during noninstructional periods. The act also provides that the school may not sponsor the activities of the student group, school officials may not be active participants in the group, and non-school persons may not direct, control, or regularly attend the student activities.

Because the choir's activities were supervised and directed by local school employees who took a direct, participatory role in the activities and the choir's programs involved non-school persons, the provisions of the act were violated. The school district's efforts to provide oversight and modify the religious nature of the choir's program were consistent with the provisions of the law, and the choir's options were to divorce itself from the school and operate independently or to comply with school policies.[13]

Torts and Related Statutory Liability

Tort liability includes both negligent and intentional conduct that involves a breach of duty causing injury actionable in damages. Negligent liability may include breach of a duty of adequate supervision, reasonable maintenance of equipment, or proper instruction. Intentional liability may include harassment, defamation, or excessive use of force.

Exercise of Reasonable Care in Woodworking Class Overcomes Special Education Student's Claim

A Louisiana special education student who injured his hand while using a table saw in a woodworking class alleged that his instructor had failed to provide proper instruction and supervision and, alternately, that the district had improperly placed him in the woodworking class.

The injury occurred when the 14-year-old student was adjusting the guide fence on a table saw. While he banged the fence with his fist, he was distracted when someone called his name, and his hand slipped into the still turning blade.

In assessing the liability of the school district for the acts of its agent, the supervising teacher, the state appeals court affirmed a lower court holding that the teacher had exercised reasonable care in the supervision of the students, even in light of the fact that the inherently dangerous nature of the equipment in the class and the age and competency of the student would require greater care than in other circumstances. In the woodworking class, the teacher had spent the first several weeks of the course reviewing safety rules and procedures and testing students on their knowledge of those rules and procedures. The instructor demonstrated each power tool and supervised students individually to ensure that each had mastered the tool. By the student's own admission, it was clear that he knew he was not supposed to adjust the guide fence while the blade was in motion.

As to the contention that the student was improperly placed in the woodworking class, the appeals court noted that the trial court had allowed testimony from expert witnesses regarding the functional competencies of the student and the appropriateness of the placement decision. The trial court found as a matter of fact that the placement decision was appropriate.[1]

Principal Is Immune for Discretionary Acts When Developing Classroom Safety Rules

An Alabama middle school student was injured during a gymnastics class when she fell from a pommel horse. At the time of the accident, the student was supervised by a certified physical education teacher, but at trial she sued the school principal on the theory that the principal had an obligation to develop certain safety procedures for use of the gymnastics equipment. The question on appeal in this case was whether the principal's responsibilities were such that he could be subject to liability for the student's injuries.

On appeal to the Supreme Court of Alabama, the court held that the principal's indirect supervisory responsibilities for the gymnas-

tics class involved the performance of a discretionary function. Because the function was discretionary, involving the exercise of judgment and choice on the part of the principal, state law provides for a measure of immunity from liability for accidents that may be attributable to the decisions that are made.

The school board policy stipulated that school principals were responsible, with the help and cooperation of the staff, for the development of regulations and procedures that would reasonably provide for the safety of all students. The court interpreted the policy to place discretion with the principal to determine the best way to develop and implement the policy. To rule otherwise, noted the court, would be to require school principals to micro-manage each of the classes at the school.

While the principal could not abdicate his responsibilities, he had the discretion to place the responsibility for developing safety procedures with a trained and certified physical education instructor. The principal performed this responsibility by emphasizing safety to the teacher and reviewing the teacher's lesson plans. Because the principal's actions involved a protected discretionary function, he was immune from negligent liability.[2]

Football Coaches Are Not Liable for Player Injuries in the Normal Course of Scrimmages

Elementary school football coaches in a Louisiana school district were sued for negligence by the parents of an eighth-grade player who sustained a fractured leg when tackled by another player in a scrimmage football game. The eighth grader weighed 110 pounds at the time of the accident, and was injured during a tackle when a 270-pound player, also an eighth grader, fell on his leg. The parents contended that coaches were negligent in requiring smaller students to scrimmage with disproportionately larger students and in failing to develop rules or policies that would prevent such scrimmages.

The Louisiana appeals court affirmed the decision of the lower state court, finding that no duty was owed to the player who was injured. At the same time, the court noted that the principle of assumption of risk as a bar to recovery for sports injuries was no longer applicable in Louisiana. While a duty to warn against participation in an unreasonably dangerous activity might be required, the court found that participation in a football scrimmage was not so inherently dangerous as to impose a duty on the coaches to protect the student against the risk of injury. The court found no duty on the part of coaches to protect players against the risk of injury from playing a football game with players of different weights.[3]

District's Playground Liability for Unknown Conditions Is Limited

Parents of a child who was injured on the playground of a New York public school sued the school district to recover for the child's injuries.

The incident occurred while the school was not in session and resulted from another child throwing a screwdriver, which hit the plaintiff child in the eye. The screwdriver was not the property of the school district, and there was no evidence as to how long it had been on the playground. The parents sought to recover on the grounds that the school district was negligent in inspection and maintenance of the playground.

The appeals court reversed the lower court holding and granted summary judgment for the school district on the parents' claim. The court held that the district was not liable since the school could not be said to have created the condition and had no notice of the condition. (There was no evidence that district either knew or should have known of the screwdriver on the playground.) Furthermore, throwing of the screwdriver by another child constituted a superseding cause that relieved the school district of liability.[4]

District Owes Duty to Develop Policy for Supervision of Young Children at End of School Day

A six-year-old Louisiana child who lived directly across the street from her elementary school was injured when she ran between two parked cars and out into the street at the end of the school day and was struck by a pick-up truck. The driver was absolved of any negligence, and the parents sued the school district for breach of a duty of supervision. The school had no policy for its students once classes were dismissed, and no crossing guards were provided to aid students in returning home. The area where the child crossed the street was marked as a school zone, and the zone was enforced by local police.

The state appeals court ruled that the school board failed to meet a duty of adequate supervision and could be held liable for the child's injuries. The court found that the duty of supervision extends beyond regular school hours in some instances and that the duty varies with the age and maturity of the child. While the failure to construct a fence around the school or to employ a crossing guard may not be a basis for imposing liability, the school district failed to have any policy in place that dealt with ensuring that young children did not leave the school premises unattended. Because this appeared to be an abdication of its responsibility to supervise students, the district could not avoid liability for negligence.[5]

Supervisory Employees Have Qualified Immunity for Hiring and Supervising Aides

Alabama school district employees were sued by an elementary school child with spina bifida who alleged that the employees were negligent in hiring and supervising a special aide who was trained to catheterize the child. The aide negligently failed to catheterize the child after she had been informed of the need to do so. The need was particularly urgent at the time the request was made because the child had just had surgery. As a result of the failure to catheterize, the child sustained physical injuries and mental trauma. The trial court allowed the suit against the aide to continue in the lower court, but dismissed the claims against the school principal, the school nurse, and the district supervisor of special education services. The child's parents sought appeal of the dismissals.

On appeal, the Supreme Court of Alabama ruled that hiring and supervising the aide was a discretionary act that entitled the school employees to qualified immunity from claims that they supervised and retained the aide negligently. While hiring and supervision is a discretionary function in this situation, the defense of qualified immunity would not apply if there were evidence of bad faith or an intent to injure. In the court's view, the question is not so much to define "discretionary" as to make a practical assessment of what, if any, degree of immunity from suit is

necessary to enable the particular government function to be effectively performed. If some degree of immunity is not provided to employees who undertake hiring and supervisory functions, then these employees may act not on the basis of policy, but with the goal of avoiding personal liability.[6]

Teacher Is Protected by Qualified Immunity in Administering Corporal Punishment

An Ohio elementary school student and the student's father brought a personal injury action against a teacher for injuries that resulted when the student was subjected to corporal punishment by the teacher. The complaint alleged that the 12-year-old student received three swats with a paddle designated for use at the school, and sustained severe bruises and emotional distress, both of which necessitated medical treatment.

The state appeals court affirmed a lower court decision, ruling that the school employee was immune from liability under state law. Ohio provides that corporal punishment may be administered by a teacher as necessary to preserve discipline, when other methods have failed. School officials and employees are immune from liability provided the use of corporal punishment is consistent with school board policies and is not actuated by malice or anger, expressed or implied.

The student and parent contended the punishment was administered contrary to board policy and the teacher was motivated by actual malice, either of which would serve to abrogate immunity. The reviewing court considered the recorded transcript of depositions and concluded that the child admitted that he had been "out-of-line" during the school day, and had called the teacher a "dickhead" on more than one occasion. Two witnesses observed the paddling, and the student was informed of why he was subjected to discipline. Considering the record on appeal, the court found no evidence that the teacher's conduct would not be protected under the provisions of the immunity law.[7]

District Owes No Duty to Protect or Warn Teachers of Violent Behavior

A New York teacher brought suit against the school board for injuries she sustained when she intervened to prevent an assault by one middle school student upon another. The teacher asserted that a security guard was posted in the hallway when the altercation occurred, but took no action to prevent the assault. Furthermore, the teacher claimed that school officials knew of the dangerous propensities of the assaulting student and should have taken steps to remove him from the school.

The state appeals court affirmed a lower court ruling dismissing the teacher's claim. In essence, the court found that the teacher failed to establish that the school district owed her a special duty to warn her of or protect her from the violent behavior of the student. Without a showing that a duty was owed, there could be no breach of a duty that would justify an award of damages.

As to the teacher's claim that the district had improperly placed the student, the court ruled that the board could not be found negligent for allowing the student to remain in school in view of its discretion on matters of education policy.[8]

State Officials Have Qualified Immunity in Reporting and Investigating Allegations of Child Abuse

The former director of an Arizona day care program sued employees of the state, alleging that he had been defamed and that the employees had interfered with a business relationship between him and his employer.

Three allegations of child sexual abuse had been made against the director. Two of these were classified as not substantiated, but a third resulted in findings that the child had been molested, and the child reported that he had been touched by the director. As the investigation progressed, the state agency that had contracted for the day care services threatened to cancel its contract unless the director was terminated. The day care center then dismissed the director.

A trial court dismissed the former director's intentional tort claims on the basis that qualified immunity protects state employees from liability for the good faith exercise of their discretionary authority. The Arizona appeals court affirmed, stating that the limited immunity granted to state employees is intended to protect the public's interest in the proper discharge of duties by public officials. Since the director could produce no evidence that the actions of state employees were motivated by malice or ill will, there was no reason to believe that the investigation and resulting decision to cancel the day care contract was motivated by bad faith. State officials were protected by the qualified privilege to exercise their discretion in good faith to protect the welfare of children in day care facilities without fear that their actions would subject them to civil liability.[9]

Defamation Is Only Actionable if Published to a Third Party

A New York school bus driver sued the school district for defamation after he was fired from his position. His termination was not published or disseminated by the school district, and the only source of information that he was no longer employed as a school bus driver came from the former employee himself.

The state appeals court affirmed a lower court decision dismissing the former employee's complaint on the grounds that to be actionable, there must be evidence that offending statements were published to a third party. Words are published, within the meaning of the law of libel, when they are in writing and are read by someone other than the person libeled and the person making the charges. Similarly, to constitute actionable slander, the slanderous words must have been spoken in the presence and hearing of some person other than the one slandered, who is not entitled to hear the defamatory matter. Absent some communication to a third person, no damage can result. In this case, the only evidence of publication was that the plaintiff-employee was the disseminator of the information that he had been fired from his position as a school bus driver with the school district.[10]

Principalship Is a Public Office for Purposes of Defamation Suit

A Minnesota elementary school principal sued a parent for a letter critical of the principal's performance. The principal, who was African-American, had received a notice of performance deficiencies in relation to allegations that she had failed to consult with staff on changes in lunchroom schedules and administered discipline in a

way that showed favoritism to minority students. The parent's letter to the superintendent and school board reiterated these complaints and concluded:

> All of these things show me that Shirley Johnson is not a good administrator. She cannot handle the job. In addition to not being able to do the job, she has introduced prejudice to the children and faculty. She should not be whining about her skin color. Her inability to be a principal has caused more harm to Meadow Lake School and its population than her skin color.

The federal district court concluded that the principal was a public official who could not recover for defamation absent a showing of actual malice on the part of the parents. A public official may be one who performs governmental duties directly related to public interests, holds a position that can significantly influence the resolution of public issues, or appears to have a position of substantial responsibility for the conduct of government affairs. Although not every public employee is a public official, the principal appeared to have substantial responsibility over the conduct of education at a public school, and this perception of responsibility was sufficient to trigger the public official standard. As a consequence, the principal must establish clear and convincing proof that the parent's letter to the board was motivated by actual malice. Actual malice requires that the parent knew that the statements were false or made the statements with reckless disregard for whether the statements were true or false. The record revealed that the parent's letter was based on the testimony of his children, and there was no evidence that the children's testimony was not credible.[11]

Principal Is a Public Figure Under State Defamation Standards

An Oklahoma school principal brought a defamation action against a newspaper for publishing a letter to the editor that was attributed to the principal. The letter, printed on school letterhead, condemned "black looters, rioters, and killers in Los Angeles" and called for the teaching of positive values. The principal claimed that the newspaper was negligent in not following its own policies to ensure that false or fake letters were not published.

The state appeals court affirmed a lower court decision dismissing the action on the basis that the newspaper could not be held liable in negligence for publication of a letter attributable to a public figure absent some allegation and proof of actual malice. The alleged wrong on the part of the newspaper was the publication of the false letter, not the failure to verify the author's identity prior to publication. Since the court concluded that the principal was a public figure, there must be evidence that the newspaper had actual knowledge that the letter was not written by the principal in order for the principal to sustain a defamation action.[12]

Reference Notes

Reference notes for cases or judicial decisions generally list the following: the parties' names, the volume number, the abbreviated title of the official case reporter series cited (e.g. "A.2d." refers to *Atlantic Reporter*, second series), the page number on which the court's opinion begins, the court that rendered the decision, and the year of the decision. For example:

Willis v. School Dist. of Kansas City, 606 S.W.2d 189 (Mo. App. 1980).

West Publishing Company's *National Reporter System*, the standard primary source for American case law and judicial decisions at the state level, groups each of the states and the District of Columbia into seven regional series:

1. Atlantic (A.):	Conn., Del., D.C., Me., Md., N.H., N.J., Pa., R.I., Vt.
2. Northeastern (N.E.):	Ill., Ind., Mass., N.Y., Ohio
3. Northwestern (N.W.):	Iowa, Mich., Minn., Neb., N.D., S.D., Wis.
4. Southern (So.):	Ala., Fla., La., Miss.
5. Southeastern (S.E.):	Ga., N.C., S.C., Va., W.Va.
6. Southwestern (S.W.):	Ark., Ky., Mo., Tenn., Tex.
7. Pacific (P.):	Alas., Ariz., Cal., Colo., Hawaii, Idaho, Kan., Mont., Nev., N.M., Okla., Ore., Utah, Wash., Wyo.

At the federal level, the *National Reporter System* includes two case reporters:

1. *Federal Reporter* (F. or F.2d)	U.S. Court of Appeals
2. *Federal Supplement* (F. Supp.)	U.S. District Courts

Decisions rendered by the United States Supreme Court are reported in the *United States Reports* (U.S.).

School Boards and Board Members (pages 2-8)

1. *United States v. Lopez*, 2 F.3d 1342 (5th Cir. 1993).
2. *United States v. Edwards*, 13 F.3d 291 (9th Cir. 1993).
3. *In Interest of Steven S.*, 434 S.E.2d 312 (S.C.App. 1993).
4. *United States v. State of Georgia*, 19 F.3d 1388 (11th Cir. 1994).
5. *Lee v. Chambers County Bd. of Educ.*, 849 F.Supp. 1474 (M.D. Ala. 1994).
6. *Simmons v. Hooks*, 843 F.Supp. 1296 (E.D.Ark. 1994).
7. *People Who Care v. Rockford Bd. of Educ.*, 851 F.Supp. 905 (N.D. Ill. 1994).
8. *United States v. Board of Educ. of Township of Piscataway*, 832 F.Supp. 636 (D.N.J. 1993).
9. *Grimes v. Sobol*, 832 F.Supp. 704 (S.D.N.Y. 1993).
10. *Alfonso v. Fernandez*, 606 N.Y.S.2d 259 (A.D. 1993).

Administrators (pages 9-13)

1. *Bradley v. West Sioux Bd. of Educ.*, 510 N.W.2d 881 (Iowa 1994).
2. *Rykowsky v. Dickinson Public School Dist.*, 508 N.W.2d 348 (N.D. 1993).
3. *Board of Trustees of Jackson Public School Dist. v. Knox*, 638 So.2d 1278 (Miss. 1994).
4. *Horton v. Jefferson County-Dubois Area Vocational Technical School*, 630 A.2d 481 (Pa. Cmwlth. 1993).
5. *Chiapuzio v. BLT Operating Corp.*, 826 F.Supp. 1334 (D.Wyo. 1993).
6. *Peden v. Suwannee County School Bd.*, 837 F.Supp. 1188 (M.D. Fla. 1993).
7. *Clemons v. Hardee County School Bd.*, 848 F.Supp. 1535 (M.D.Fla. 1994).

Finance (pages 14-17)

1. *Claremont School Dist. v. Governor*, 635 A.2d 1375 (N.H. 1993).
2. *Scott v. Commonwealth of Virginia*, 443 S.E.2d 138 (Va. 1994).
3. *Jenkins by Agyei v. State of Missouri*, 11 F.3d 735 (8th Cir. 1993).
4. *State ex rel. Marockie v. Wagoner*, 438 S.E.2d 810 (W.Va. 1993).
5. *School Dist. of City of Pontiac v. Department of Educ.*, 516 N.W.2d 516 (Mich.App. 1994).
6. *Corner Construction Corp. v. Rapid City School Dist.*, 845 F.Supp. 1354 (D.S.D. 1994).

Teachers and Other District Employees (pages 18-29)

1. *Moody v. Jefferson Parish School Bd.*, 2 F.3d 604 (5th Cir. 1993).
2. *Cromley v. Board of Educ. of Lockport*, 17 F.3d 1059 (7th Cir. 1994).
3. Mazurek *v. Wolcott Bd. of Educ.*, 849 F.Supp. 154 (D. Conn. 1994).
4. *Winegar v. Des Moines Independent Community School Dist.*, 20 F.3d 895 (8th Cir. 1994).
5. *Knowles v. Board of Educ.*, 857 P.2d 553 (Colo.App. 1993).
6. *Unified School Dist. No. 434 v. Hubbard*, 868 P.2d 1240 (Kan.App. 1994).
7. *Spurger v. Rapides Parish School Bd.*, 628 So.2d 1317 (La.App. 1993).
8. *Jones v. Rapides Parish School Bd.*, 634 So.2d 1197 (La.App. 1993).
9. *Kramer v. Newman*, 840 F.Supp. 325 (E.D. Pa. 1993).
10. *Riverview School Dist. v. Riverview Educ. Ass'n*, 639 A.2d 974 (Pa. Cmwlth. 1994).

11. *Farmer v. Kelleys Island Bd. of Educ.*, 630 N.E.2d 721 (Ohio 1994).
12. *Byrd v. Greene County School Dist.*, 633 So.2d 1018 (Miss. 1994).
13. *Johnson v. Frances Howell*, R-3 Bd. of Educ., 868 S.W.2d 191 (Mo.App. 1994).
14. *Ginther v. Ovid-Elsie Schools*, 506 N.W.2d 523 (Mich.App. 1993).
15. *Atkins v. School Com'rs of City of Indianapolis*, 830 F.Supp. 1169 (S.D.Ind. 1993).
16. *McGlothin v. Jackson Mun. Separate School Dist.*, 829 F.Supp. 853 (S.D.Miss. 1992).
17. *Locastro v. East Syracuse-Minoa Cent. School Dist.*, 830 F.Supp. 133 (N.D.N.Y. 1993).

Pupils (pages 30-41)

1. *Hedges v. Wauconda Community School Dist. 118*, 9 F.3d 1295 (7th Cir. 1993).
2. *Desilets v. Clearview Bd. of Educ.*, 630 A.2d 333 (N.J.Super. 1993).
3. *Baxter v. Vigo County School Corp.*, 26 F.3d 728 (7th Cir. 1994).
4. *Colorado Independent School Dist. v. Barber*, 864 S.W.2d 806 (Tex. App. 1993).
5. *Jeglin v. San Jacinto Unified School Dist.*, 827 F.Supp. 1459 (C.D.Cal. 1993).
6. *Lovell v. Poway Unified School Dist.*, 847 F.Supp. 780 (S.D.Cal. 1994).
7. *Acton v. Vernonia School Dist.*, 23 F.3d 1514 (9th Cir. 1994).
8. *Moore v. Florence School Dist.*, 444 S.E.2d 498 (S.C. 1994).
9. *People v. Taylor*, 625 N.E.2d 785 (Ill.App. 1993).
10. *State v. Serna*, 860 P.2d 1320 (Ariz.App. 1993).
11. *Gerks v. Deathe*, 832 F.Supp. 1450 (W.D.Okla. 1993).
12. *Thrower v. Barney*, 849 F.Supp. 1445 (N.D.Ala. 1994).
13. *Kubany v. School Bd. of Pinellas*, 839 F.Supp. 1544 (M.D.Fla. 1993).
14. *Doe v. Taylor Independent School Dist.*, 15 F.3d 443 (5th Cir. 1994).
15. *Walton v. Alexander*, 20 F.3d 1350 (5th Cir. 1994).
16. *Floyd v. Waiters*, 831 F.Supp. 867 (M.D. Ga. 1993).
17. *Fontes v. Irvine Unified School Dist.*, 30 Cal.Rptr.2d 521 (Cal.App. 1994).
18. *Doe v. Petaluma City School Dist.*, 830 F.Supp. 1560 (N.D.Cal. 1993).
19. *Patricia H. v. Berkeley Unified School Dist.*, 830 F.Supp. 1288 (N.D.Cal. 1993).

Special Education (pages 42-49)

1. *J. M., J. R. v. Montana High School Ass'n.*, 875 P.2d 1026 (Mont. 1994).
2. *Sacramento City Unified School Dist. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994).
3. *Mavis v. Sobol*, 839 F.Supp. 968 (N.D.N.Y. 1994).
4. *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993).
5. *T.S. v. Board of Educ. of Ridgefield*, 10 F.3d 87 (2nd Cir. 1993).
6. *Gerstmyer v. Howard County Public Schools*, 850 F.Supp. 361 (D. Md. 1994).
7. *Teague Independent School Dist. v. Todd L.*, 999 F.2d 127 (5th Cir. 1993).
8. *Florence County School Dist. v. Carter*, 114 S.Ct. 361 (1993).
9. *Dreher v. Amphitheater Unified School Dist.*, 22 F.3d 228 (9th Cir. 1994).
10. *Pihl v. Massachusetts Dept. of Educ.*, 9 F.3d 184 (1st Cir. 1993).
11. *Murphy v. Timberlance Regional School Dist.*, 22 F.3d 1186 (1st Cir. 1994).
12. *Komninos v. Upper Saddle River Bd. of Educ.*, 13 F.3d 776 (3rd Cir. 1994).
13. *Brantley v. District of Columbia*, 640 A.2d 181 (D.C.App. 1994).
14. *Broadley v. Board of Educ. City of Meriden*, 639 A.2d 502 (Conn. 1994).

Religion (pages 50-57)

1. 112 S.Ct 2649 (1992).
2. *Board of Educ. of Kiryas Joel v. Grumet,* 114 S.Ct. 2481 (1994).
3. *Adler v. Duval County School Board,* 851 F.Supp. 446 (M.D. Fla. 1994).
4. *Gearon v. Loudoun County School Bd.,* 844 F.Supp. 1097 (E.D. Va. 1993)
5. *Brown v. Woodland Joint Unified School Dist.,* 27 F.3d 1373 (9th Cir. 1994).
6. *Fleischfresser v. Directors of School Dist. 200,* 15 F.3d 680 (7th Cir. 1994).
7. *Guyer v. School Bd. of Alachua County,* 634 So.2d 806 (Fla.App. 1st D. 1994).
8. *Clever v. Cherry Hill Township Bd. of Educ.,* 838 F.Supp. 929 (D.N.J. 1993).
9. *Shumway v. Albany County School Dist. No. One,* 826 F.Supp. 1320 (D.Wyo. 1993).
10. *Sherman v. Community Consol. School Dist. 21,* 8 F.3d 1160 (7th Cir. 1993).
11. *Fairfax Covenant Church v. Fairfax County School Bd.,* 17 F.3d 703 (4th Cir. 1994).
12. *Pope by Pope v. East Brunswick Bd. of Educ.,* 12 F.3d 1244 (3rd Cir. 1993).
13. *Sease v. School Dist. of Philadelphia,* 811 F.Supp. 183 (E.D.Pa. 1993).

Torts and Related Statutory Liability (pages 58-63)

1. *Fontenot v. State of Louisiana,* 635 So.2d 627 (La. App. 1994).
2. *Hayes through Hayes v. Walters,* 628 So.2d 558 (Ala. 1993).
3. *Laiche v. Kohen,* 621 So.2d 1162 (La. App. 1993).
4. *Mix v. South Seneca Cent. School Dist.,* 602 N.Y.S.2d 467 (A.D. 1993).
5. *Gary on behalf of Gary v. Meche,* 626 So.2d 901 (La. App. 1993).
6. *Nance by and through Nance v. Matthews,* 622 So.2d 297 (Ala. 1993).
7. *Rinehart v. Board of Educ. Western Local School Dist.,* 621 N.E.2d 1365 (Ohio App. 1993).
8. *Brady v. Board of Educ. of City of New York,* 602 N.Y.S.2d 892 (A.D. 1993).
9. *Carroll v. Robinson,* 874 P.2d 1010 (Ariz. App. 1994).
10. *Fedrizzi v. Washingtonville Central School Dist.,* 611 N.Y.S.2d 584 (A.D. 1994).
11. *Johnson v. Robbinsdale Indep. School Dist.,* 827 F.Supp. 1439 (D.Minn. 1993).
12. *Jordan v. World Publishing,* 872 P.2d 946 (Okla.App. 1994).

Glossary of Selected Legal Terms

affirmed	Decision of a lower court upheld by a superior court.
appeal	Resort by one of the parties to a litigation to a superior or appellate court for review of the decision of an inferior court.
class action	A legal action brought on behalf of a group or class of individuals by one or more representatives of the class.
D.	District Court, e.g., "D. Del." (U.S. District Court of the Delaware District).
defamation	Holding a person up to scorn, ridicule, or public contempt that tends to injure the person's reputation; may be criminal or civil, and includes slander (spoken) and libel (written).
due process	Procedural rights to a notice of and a hearing on disputed issues of law or fact.
enjoin	To prohibit an act or acts, by order of a court.
implicate	To show a person, or entity, to be involved.
in loco parentis	In the place of a parent.
injunction	A prohibitive writ that forbids a party from carrying out, or continuing to carry out, an act injurious to the complainant.
issue of material fact	A question of fact which must be decided before the law can be applied to resolve a controversy.
libel	Written defamation.
liberty interest	The constitutional right to act without restraint or control, particularly as reflected in the individual's right to seek employment or avoid injury to reputation.
nexus	A linkage or relationship, such as a nexus between the teacher's allegedly immoral conduct and an adverse impact on classroom performance.
per se	By itself; established without the necessity for additional proof or evidence.
prima facie	On first sight; on its face; sufficient to establish a given fact if uncontradicted.
remand	To send back to a lower court for the purpose of having some further action taken by the lower court.

reporter	A periodic compilation of cases.
slander	Spoken defamation.
summary judgment	Short, concise decision without a jury. Motions for a summary judgment are taken on the ground that there is no genuine issue of material fact; the party in whose favor a summary judgment is issued prevails as a matter of law. This type of motion may be directed to all or only part of a case.
Supreme Court term	The Court's term begins in October and runs to the following June or the completion of the case of that term; the yearly designation for the term derives from the year in which the term opens, e.g., the 1992 term began in October 1992.
torts	Private or civil wrong or injury. Remedy in this type of action has three elements: existence of a legal duty from defendant to plaintiff; breach of that duty; and damage as a result of that breach.
unitary status	An order of a federal court, finding that a previously segregated or dual system of public education has eliminated segregated status.
U.S.C.	United States Code, the federal compilation of statute laws.

NOTES

NOTES

EDUCATIONAL RESEARCH SERVICE
2000 Clarendon Boulevard
Arlington, Virginia 22201
Phone: (703) 243-2100
Fax: (703) 243-8316